IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re VILLAGE ROADSHOW ENTERTAINMENT GROUP USA INC., *et al*.,[1] Debtors.	Chapter 11 Case No. 25-10475 (TMH) (Jointly Administered) **Re: D.I. 908 & 909**

APPENDIX OF WARNER BROS. ENTERTAINMENT INC. AND ITS AFFILIATES TO WARNER BROS.' SUPPLEMENTAL OBJECTION IN CONNECTION WITH THE DERIVATIVE RIGHTS SALE HEARING

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[1] The last four digits of Village Roadshow Entertainment Group USA Inc.'s federal tax identification number are 0343. The mailing address for Village Roadshow Entertainment Group USA Inc. is 750 N. San Vicente Blvd., Suite 800 West, West Hollywood, CA 90069. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors and the last four digits of their federal tax identification is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://www.veritaglobal.net/vreg.

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APPENDIX

Listed below are the documents and excerpts of documents cited in *Warner Bros. Entertainment Inc.'s Supplemental Objection to (I) the Debtors' Motion For an Order Approving the Sale Of the Debtors' Assets and (II) the Debtors' Assumption and Assignment of Certain Warner Bros. Agreements* and the *Supplemental Declaration of Wayne M. Smith in Support of Warner Bros. Entertainment Inc.'s Supplemental Objection to (I) the Debtors' Motion For an Order Approving the Sale Of the Debtors' Assets and (II) the Debtors' Assumption and Assignment of Certain Warner Bros. Agreements.*

App'x Ex. No.[2]	Document	Bates Number
26.	September 8, 2025 Revised Warner Bros. Bid	WB_0002791
27.	September 16, 2025 Warner Bros. Letter	WB_0002816
28.	October 10, 2024 email exchange between J. McIntosh and D. Adametz	(WB_0000697) (AEO)
29.	October 10, 2024 email exchange between WB Clips and Stills Licensing Department and J. Hill	(WB_0000690) (AEO)
30.	Alcon Complaint	WB_0001026
31.	October 21, 2024 email from W. Smith to Alcon COO S. Parish	(WB_0000703) (AEO)
32.	Alcon's response to Initial MTDs 02/13/2025	WB_0001247
33.	Alcon Amended Complaint 02/13/2025	WB_0000943
34.	Alcon Lawsuit Tentative Ruling	WB_0001087
35.	Alcon Lawsuit Minute Order 04/07/2025	WB_0001078
36.	Alcon Second Amended Complaint 06/16/2025	WB_0001149
37.	Warner Bros.' Second MTD 07/30/2025	WB_0001283
38.	Alcon's opposition to Second MTDs 08/21/2025	WB_0001123
39.	Warner Bros., Musk and Tesla reply in support of Second MTDs 06/28/2025	WB_0001257
40.	Alcon Lawsuit Second Tentative Ruling 09/09/2025	WB_0001079
41.	Minute Order allowing Alcon leave to amend its complaint no later than October 2nd, 2025 (09/11/2025)	WB_0001256

[2] For ease of reference, the exhibits listed in this appendix continue the numbering scheme followed in Exhibits 1-25 of *The Declaration of Wayne M. Smith in Support of Warner Bros. Entertainment Inc.'s Omnibus Objection to (I) the Debtors' Motion for an Order Approving the Sale of the Debtors' Assets, (II) the Debtors' Assumption and Assignment of Certain Warner Bros. Agreements* [D.I. 519], which is incorporated herein by reference.

42.	Alcon Third Amended Complaint 10/02/25	WB_0002795
43.	The [redacted] Emails (Jan 19 – Feb 1, 2024)	(WB_0000687) (AEO)
44.	[redacted] email exchange 05/29/2025	(WB_0000694) (AEO)
45.	Practical Magic Assignment	WB_0002780
46.	2009 MPRPA	WB_0000001
47.	2012 MPRPA	WB_0002669
48.	1998 QCSA	WB_0002489
49.	Practical Magic Derivative Rights Assignment 10/15/1998	WB_0002658
50.	Great Gatsby Derivative Rights Assignment 05/09/2013	WB_0002649
51.	Joker Assignment 10/01/2019	WB_0002235
52.	Promissory Note Re: [redacted]	WB_0000628
53.	May 26, 2010 Loan Agreement	WB_0000644
54.	[redacted] (July 2020)	WB_0002924
55.	PM2 Project Notice Email (including attachment)	(WB_0002328) (AEO)
56.	Village's Purported Acceptance Re: PM2 Project Notice	WB_0002656
57.	September 8, 2025 Warner Letter Re: Village Purported Acceptance of PM2 Project Notice	WB_0002824
58.	Excerpts from Transcript of Deposition of K. Berg 09/30/25 (Individual and 30(b)(6))	N/A
59.	[redacted] 09/24/25	ALCON000029
60.	[redacted] 09/25/25	ALCON000028
61.	Transcript of Status Conference 08/22/25	WB_0002896
62.	[redacted] Letter 09/25/25	ALCON000030
63.	[redacted] Letter 09/04/25	VREG-WB-004778-80
64.	Redline of Alcon Derivative Rights APA	WB_0002828
65.	*Svenhard's Swedish Bakery v. Bakery (In re Svenhard's Swedish Bakery)*, No. 23-60045, 2025 LX 328143 (9th Cir. Sep. 12, 2025),	WB_0002918

Dated: October 6, 2025
Wilmington, Delaware

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Exhibit 26

SUBJECT TO FRE 408 AND ALL STATE EQUIVALENTS

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Counsel to Village Roadshow Entertainment Group USA Inc. and its Debtor affiliates

Re: Confidential Settlement Offer - *In Re: Village Roadshow Entertainment Group USA Inc., et al., Case No. 25-10475, the "Bankruptcy Cases")*[1]

Counsel,

On behalf of Warner Bros. Entertainment Inc. and its affiliates (collectively, "Warner Bros."), we write to propose a settlement of various issues that involve Warner Bros. in these Bankruptcy Cases (the "Warner Bros. Settlement"). The material terms of the Warner Bros. Settlement are set forth below, however, they shall remain subject to (i) the parties' execution of definitive documentation and (ii) a Fed. R. Bankr. P. 9019 motion subject to Bankruptcy Court approval. In addition, the Warner Bros. Settlement shall at all times be conditioned on the Bankruptcy Court's approval of, and the closing of, the Debtors' sale of all of their rights, title, and interests in the Derivative Rights to Warner Bros., which includes, for the avoidance of the doubt at Warner Bros.' election, the Debtors' assumption and assignment and/or termination of the Derivative Rights Agreements in favor of Warner Bros. (collectively, the "Warner Bros. Sale"). The Warner Bros. Sale shall be free and clear of any and all interests of any person or entity under section 363 of the Bankruptcy Code.

As a result of the Warner Bros. Sale, Warner Bros. will own (i) one hundred percent (100%) of all Derivative Rights to each and every Warner Bros.' motion picture and (ii) one hundred percent (100%) of the Debtors' interest in the Derivative Rights for all other Pictures.[2] The terms

[1] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in *Warner Bros. Entertainment Inc.'s Omnibus Objection to (I) the Debtors' Motion for an Order Approving the Sale of the Debtors' Assets, (II) the Debtors' Sale Supplement With Respect Thereto and (III) the Debtors' Assumption and Assignment of Warner Bros. Agreements* [Dkt. No. 518] (Filed Under Seal) and [Dkt. No. 521] (Redacted Version) filed in these Bankruptcy Cases.

[2] The Pictures include any and all films or television productions in which any of the Debtors, their subsidiaries and/or affiliates hold or assert any Derivative Rights.

of the proposed Warner Bros. Settlement are subject to the Debtors promptly accepting the Warner Bros.' Settlement described herein, and promptly seeking and obtaining Court approval of both the Warner Bros. Settlement and the Warner Bros. Sale. There shall be no further bidding for the Derivative Rights upon acceptance by the Debtors of this settlement offer, which is confidential and not to be shared with any parties other than the Consultation Parties.

The material terms of the Warner Bros. Settlement shall include the following:

- Warner Bros. will match Alcon's bid of $18.5 million for the Derivative Rights under the same terms as Warner Bros.' designated Back-Up Bid of $17.5 million, as provided in the Warner Bros. purchase agreement, bid letter, and Warner Bros.' agreed modifications thereto, as supplemented by the terms of this letter.
- Warner Bros. will further agree that the Warner Bros. Reserve can be reduced by $10 million. Such reduction (from $110 million to $100 million) would immediately free up $10 million in funds back into the Debtors' estate upon the closing of the Warner Bros. Sale that could be used to pay other general unsecured creditors. Warner Bros. would consent to such use of the funds. This agreement only reduces the amount of the Warner Bros. Reserve, but shall not impact Warner Bros.' ability to seek its full damages, including an amount in excess of $100 million, in the Matrix Arbitration. As provided in the Warner Bros' purchase agreement, Warner Bros. still reserves all rights with respect to the Matrix Arbitration.
- In addition, upon the closing of the Warner Bros. Sale, Warner Bros. will enter into a stipulation with the Debtors to dismiss all claims and counterclaims in the Wonka Arbitration (with each party to bear its own fees and costs).
- Warner Bros. will further agree, upon the closing of the Warner Bros. Sale, not to seek standing to assert the estate claims otherwise reserved with respect to Warner Bros. and set forth in the *Fourth Stipulation With Prepetition Senior Secured Noteholders Extending Committee and Warner Bros. Challenge Rights Pursuant to Final DIP Financing Orde*r [Dkt. No. 784-1] (extending the Challenge Period with respect to Warner Bros. and the Committee as it relates to the Prepetition Lien and Claim Stipulations by the Debtors in favor of the Prepetition Senior Secured Notes Parties, as defined therein, until September 30, 2025).
- Warner Bros. believes that the Bankruptcy Court's approval of the Warner Bros. Settlement, and closing of the Warner Bros. Sale, would also resolve the objections made by Regency Entertainment (USA), Inc. in connection with the Debtors' proposed sale of the Derivative Rights. *See* Dkt. Nos. 481-83.[3]
- Upon closing of the Warner Bros. Sale, Warner Bros. will further release any claim it may have against the Debtors regarding the Library Debtors' payment of the Roll-Up

[3] Regency may be consulted about this settlement as necessary for the limited purpose of determining whether it will withdraw its current sale objections.

Obligations from Village Roadshow Films (BVI) Ltd. ("VRF"), including any right of reimbursement.[4]

Please note this settlement offer remains subject to a full and ongoing reservation of rights, specifically with respect to the parties' execution of definitive documentation and the Bankruptcy Court's approval of the Warner Bros. Settlement. This offer shall remain open until five (5) days after your receipt of this letter (the "Deadline"). Unless this offer has been accepted by the Debtors in writing on the terms set forth herein by the Deadline, it will be deemed to be withdrawn, terminated and of no force or effect.

We look forward to hearing from you and are available to discuss at your convenience.

[Remainder of page intentionally left blank.]

[4] Based on Warner Bros.' review of the funds flow following the Debtors' closing of the Library Asset sale to Alcon, it appears VRF—a Library Debtor and WB Arbitration Debtor (as defined in the Final DIP Order)—paid the Roll-Up Obligations to one of the DIP Lenders. Under the Final DIP Order, the Debtors were required to "satisfy such obligations from proceeds allocated to entities ***other than*** the WB Arbitration Debtors," Final DIP Order ¶ 33 (emphasis added), which includes VRF. Without taking a position as to whether or not payment of such amounts were improper under the Final DIP Order and Library Sale Order, Warner Bros. otherwise reserves all rights in connection therewith to the extent the Warner Bros. Settlement is not consummated as set forth herein, including the right to maintains a post-petition claim for a right of reimbursement against the Notes Debtors (as defined in the Final DIP Order). *See id.* ¶¶ K, 2(h).

SUBJECT TO FRE 408 AND ALL STATE EQUIVALENTS

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Exhibits 27-29

[Filed Under Seal]

Exhibit 30

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALCON ENTERTAINMENT, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TESLA, INC., a Texas Corporation; ELON MUSK, an individual; WARNER BROS. DISCOVERY, INC., a Delaware Corporation;

Defendants.

CASE NO.

COMPLAINT FOR:

1) **DIRECT COPYRIGHT INFRINGEMENT;**
2) **VICARIOUS COPYRIGHT INFRINGEMENT;**
3) **CONTRIBUTORY COPYRIGHT INFRINGEMENT;**

AND

4) **FALSE ENDORSEMENT IN VIOLATION OF 15 U.S.C. § 1125(a)(1)(A)**

DEMAND FOR JURY TRIAL

Plaintiff Alcon Entertainment, LLC ("Plaintiff" or "Alcon"), through its attorneys, hereby alleges its Complaint against defendants Tesla, Inc. ("Tesla"), Elon Musk ("Musk"), and Warner Bros. Discovery, Inc. ("WBDI") (collectively, "Defendants" and each separately a "Defendant"):

SUBJECT MATTER JURISDICTION

1. The Court has federal question subject matter jurisdiction per 15 U.S.C. § 1121(a), 28 U.S.C. §§ 1331 and 1338(a) and (b), and on the grounds that this is a civil action arising under the laws of the United States. Plaintiff seeks relief under the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101, *et al.*, and the Lanham Act, 15 U.S.C. §§ 1125(a)(1)(A), in interstate commerce.

SUMMARY OF DISPUTE

2. Defendants requested permission to use an iconic still image (Exhibit A) from Alcon's "Blade Runner 2049" motion picture ("BR2049" or the "Picture") to promote Tesla's new fully autonomous cybercab in an October 10, 2024 event that was livestreamed worldwide from WBDI's Burbank, California studio lot. Alcon refused all permissions and adamantly objected to Defendants suggesting any affiliation between BR2049 and Tesla, Musk or any Musk-owned company. Defendants then used an apparently AI-generated faked image to do it all anyway.

3. Defendants apparently fed the Exhibit A Image, and similarly iconic images from the same visual sequence at BR2049's dramatic core (Exhibit B), into an AI-driven image generator, and then directed the AI to make a lightly stylized fake screen still from BR2049 (Exhibit C). Defendants then made this faked image the second presentation slide of the event, displaying it full screen on the livestream feed for 11 seconds (a marketing and advertising eternity) at the opening of Musk's cybercab sales pitch remarks.

4. During those 11 seconds, Musk tried awkwardly to explain why he was showing the audience a picture of BR2049 when he was supposed to be talking about his new product. He really had no credible reason. Musk ostensibly invited

the global audience to think about the cybercab's possibilities in juxtaposition to BR2049's fictional future. But it all exuded an odor of thinly contrived excuse to link Tesla's cybercab to strong Hollywood brands at a time when Tesla and Musk are on the outs with Hollywood.[1] Which of course is exactly what it was.

5. It was hardly coincidental that the only specific Hollywood film which Musk actually discussed to pitch his new, fully autonomous, AI-driven cybercab was BR2049 – a film which just happens to feature a strikingly-designed, artificially intelligent, fully autonomous car throughout the story. Especially where Defendants had asked Alcon's permission to use BR2049 and been so firmly refused, this was clearly all a bad faith and intentionally malicious gambit by Defendants to make the otherwise stilted and stiff content of the joint WBDI-Tesla event more attractive to the global audience and to misappropriate BR2049's brand to help sell Teslas.

6. The financial magnitude of the misappropriation here was substantial. Alcon has spent decades and hundreds of millions of dollars building the BR2049 brand into the famous mark that it now is. Prior actual BR2049 contracts linking automotive brands to the Picture have had dollar price tags in the eight figures. The financial stakes and complexity of BR2049 automotive brand affiliations are especially high at the immediate moment. Alcon is in talks with other automotive brands for partnerships on Alcon's BR2049-based *Blade Runner 2099* television series currently in production, and Defendants' conduct is likely to cause confusion among Alcon's potential brand partner customers.

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[1] *See, e.g.*, Brett Berk, "Hollywood Can't Ditch Its Tesla's Fast Enough: 'They're Destroying Their Leases and Walking Away,'" *The Hollywood Reporter*, September 20, 2024, https://www.hollywoodreporter.com/lifestyle/lifestyle-news/tesla-robotaxi-warner-bros-reveal-hollywood-rejection-elon-musk-1236007945/.

7. Beyond these more ordinary commercial issues, there is the problematic Musk himself. Any prudent brand considering any Tesla partnership has to take Musk's massively amplified, highly politicized, capricious and arbitrary behavior, which sometimes veers into hate speech, into account. If, as here, a company or its principals do not actually agree with Musk's extreme political and social views, then a potential brand affiliation with Tesla is even more issue-fraught. Alcon did not want BR2049 to be affiliated with Musk, Tesla, or any Musk company, for all of these reasons.

8. Now BR2049 unfortunately and falsely is so affiliated, and far beyond the 11 seconds of presentation time at the cybercab live event. The event's worldwide livestream X feed, including Musk's forced BR2049-laced opening, was re-tweeted or re-posted by Tesla, Musk, X and others thousands of times, with millions of total views. The false affiliation between BR2049 and Tesla is irreparably entangled in the global media tapestry, all as Defendants knew would inevitably happen, and amplifying the damage and confusion risks.

9. This was and is all highly offensive to Alcon's right to commercial and cultural self-determination. It was also a massive economic theft. Based on prior BR2049 automotive brand affiliation contracts and the nature and scope of the use here, the fair market value of the brand affiliation goodwill that Defendants stole is at least in the six figures and possibly much higher. Beyond Alcon's lost fees for the unauthorized association, Defendants muddied the waters for Alcon's in-progress exploration of automotive brand partnerships for the upcoming BR2049-based *Blade Runner 2099* television series.

10. Alcon now seeks relief under the United States Copyright Act and the Lanham Act, for damages and to pry Musk and his co-Defendants away from Alcon's BR2049 brand and goodwill.

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WB_0001029

PERSONAL JURISDICTION OVER DEFENDANTS

11. Per Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure, this Court has personal jurisdiction over any defendant who is subject to the jurisdiction of any California court of general jurisdiction. California's long arm statute, *Cal. Code Civ. Pro.* § 410.10, allows courts in the state to exercise personal jurisdiction over parties to the full extent permissible under the United States Constitution. Personal jurisdiction over the Defendants here is thus proper if it comports with due process. It does, including for the following reasons.

Personal Jurisdiction Over Tesla

12. General Personal Jurisdiction: The Court has general or unlimited personal jurisdiction over Tesla. Tesla is currently incorporated under the laws of the State of Texas and its principal corporate office or headquarters is in Austin, Texas and has been since about December 2021. However, California was Tesla's original principal corporate office home state, from Tesla's inception in about 2003 until the December 2021 move to Texas. Tesla still maintains continuous and systematic contacts with California, including continuing to operate at least two major manufacturing plants in the state.

13. Specific Personal Jurisdiction: Additionally and/or in the alternative, the Court has specific or limited personal jurisdiction over Tesla. Alcon's claims arise out of Tesla's purposeful availment of the rights, privileges, and protections of doing business in California, and also arise out of Tesla's commission of tortious activity in California and purposeful direction of tortious conduct toward the forum state. Tesla committed the acts of infringement alleged herein, or substantial portions of them, in preparation for and during the course of the October 10, 2024 cybercab product reveal event at WBDI's Burbank, California studio lot. The event was personally conducted by Musk who is Tesla's founder, principal and Chief Executive Officer. Tesla's acts of copyright infringement and violations of the Lanham Act all constituted torts directed toward Alcon, a forum resident, and

relate to the motion picture industry, which is of compelling interest to the forum state. Exercise of personal jurisdiction over Tesla also is reasonable and fair.

Personal Jurisdiction Over Musk

14. The Court has at least specific or limited personal jurisdiction over Musk as an individual. Plaintiff's claims against him arise out of his acts of purposeful availment of the benefits and privileges of conducting activities in California, including where he personally conducted the event from the WBDI lot in Burbank, California. Plaintiff's claims also arise out of Musk's commission of tortious acts while physically present in the forum state. His acts also constituted purposeful direction of tortious conduct to the forum, all for the same specific facts and reasons as described above regarding Tesla personal jurisdiction. Exercise of personal jurisdiction over Musk as an individual also is reasonable and fair. At any given time depending on stock market fluctuations, Musk is reportedly the richest man in the world and has ample resources to defend himself in California court.

Personal Jurisdiction Over WBDI

15. The Court has general or unlimited personal jurisdiction over WBDI. WBDI is incorporated under the laws of the State of Delaware and its principal corporate office or headquarters is in New York. However, WBDI has continuous and systematic contacts with California, including owning and operating one of Hollywood's oldest major motion picture and television studios including the Warner Bros. Studios lot in Burbank, California.

16. Additionally and/or in the alternative, the Court has specific or limited personal jurisdiction over WBDI. Alcon's claims arise out of WBDI's purposeful availment of the rights, privileges, and protections of doing business in California. They also arise out of WBDI's commission of tortious activity in California and purposeful direction of tortious conduct toward the forum state. WBDI's involvement in acts of copyright infringement and violations of the Lanham Act all constituted torts directed toward Alcon, a forum resident. They all relate to the

motion picture industry, an industry in which the forum state has a compelling interest. Exercise of personal jurisdiction over WBDI also is reasonable and fair.

VENUE

28 U.S.C. § 1391(b)(2) Venue as to all Defendants

17. Venue is proper as to all Defendants pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to Alcon's claims occurred, or a substantial part of the property that is the subject of the action is situated, within this judicial district. The infringed property in question includes Alcon's copyright in BR2049 and ownership of BR2049 marks and goodwill, which property is all located within this district for venue purposes, where Alcon has its corporate headquarters in Los Angeles, California.

Additional Venue Bases

18. Venue also is proper as to WBDI and Tesla pursuant to 28 U.S.C. §§ 1400(a) and 1391(d). For venue purposes, Tesla and WBDI each reside in or may be found within this district. Tesla and WBDI each have continuous and systematic contacts with the forum state and this district specifically, including sufficient contacts with this district to establish personal jurisdiction in this district, if this district were treated as a separate state.

PARTIES

Plaintiff

19. Alcon is an independent motion picture and television studio whose products are distributed worldwide. Alcon is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 10390 Santa Monica Blvd., #250, Los Angeles, California 90025.

20. Alcon produced BR2049 and owns the BR2049 copyright and the BR2049 marks and brand at issue in this action. Alcon has produced more than thirty other major motion pictures, including "The Blind Side" (which won the 2009 Academy Award for Best Actress), the "Dolphin Tale" series, the "Sisterhood

of the Traveling Pants" series, "Book of Eli," "P.S. I Love You," "My Dog Skip," "Prisoners," and "The Garfield Movie." Alcon also produces television, including the critically acclaimed television series *The Expanse*. Alcon is currently in production on a "Blade Runner 2049" sequel or spinoff television series entitled *Blade Runner 2099*.

Defendants

21. Tesla: Tesla is a well-known developer and manufacturer of electric automobiles. Some of Tesla's automobile products are marketed as partially or fully autonomous. The idea of AI-controlled or otherwise autonomous automobiles is a Tesla brand focus.

22. Musk: Musk is Tesla's founder, largest shareholder and Chief Executive Officer. In addition to owning and operating Tesla, he also owns and operates the social media platform X (formerly Twitter) and the rocket and satellite company SpaceX, among other ventures. Musk has become an increasingly vocal, overtly political, highly polarizing figure globally, and especially in Hollywood.

23. WBDI: WBDI is one of the largest entertainment conglomerates in the world. It owns the Warner Bros. Studios lot in Burbank, California. WBDI is currently run by its Chief Executive Officer, David Zaslav, a man who is both friendly with Musk and controversial in Hollywood in his own right.

FACTS COMMON TO ALL CAUSES OF ACTION

The Infringed Work And Brand

24. Alcon is the owner and, as to all rights at issue herein, the exclusive copyright holder, of the BR2049 motion picture. The Picture is registered with the United States Copyright Office under registration number PA0002056792 and has been since October 6, 2017. The images from BR2049 shown in Exhibits A and B are from an iconic visual sequence at the dramatic core of the Picture. In the copyright context, they are qualitatively significant to the Picture and they qualify

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as being at the "heart of the work." They also have secondary meaning in the Lanham Act context, all as discussed below.

25. The Picture tells the story of the main character "K" (played by Ryan Gosling). K is an artificially intelligent android or replicant pursuing the possible existence of a wholly or partially replicant child conceived by, and born to, a replicant mother, a phenomenon which would re-order the entire societal relationship between humans and their artificially intelligent replicant creations. K's trench coat or "duster" is the predominant feature of his wardrobe or costume. Throughout the Picture, K travels in, and is assisted by, his artificially intelligent, quasi-sentient flying car, or "spinner," which is capable of autonomous action.

26. The Exhibit A and B images are from among the most memorable sequences in the Picture: K's arrival in, and exploration of, the orange-colored ruins of the Picture's abandoned Las Vegas, rendered uninhabitable by a dirty nuclear device many years prior to the story's timeframe. The sequence follows K as he leaves the spinner and walks in his trench coat or "duster" toward and through the misty orange urban desert ruins, often viewed by the camera from behind or in silhouette. The sequence leads up to and forebodes the Picture's dramatic apogee: K's encounter with his predecessor Deckard (Harrison Ford) from the original 1982 "Blade Runner" motion picture (the "1982 Picture").

27. The image attached hereto as Exhibit A and incorporated herein by reference is a still image from the above sequence. It is an image positioned from behind K, with his close-cropped hair, garbed in his distinctive trench coat or "duster," as he stands next to his spinner, facing away from the camera to survey the devastated orange-light-bathed Las Vegas cityscape ("Exhibit A Image"). In the Exhibit A Image, K is surveying the ruins as he prepares to set out on the walk through them that will lead him to the long-lost and mysterious Deckard – the most highly anticipated encounter in the Picture.

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28. The images attached hereto as Exhibit B and incorporated herein by reference are still images from K's walk through the ruins to encounter Deckard ("Exhibit B Images").

29. "Blade Runner 2049," and the words "Blade Runner" in contexts that refer to or include BR2049 (such as, for example, the words "Blade Runner" not followed by the number "2049," but alongside iconic images from BR2049, or other callouts to specific scenes or elements of BR2049), the Exhibit A Image, and the Exhibit B Images, all have secondary meaning within the meaning of the Lanham Act, at the level of famous marks.

30. They have achieved that status not merely accidentally, but because of Alcon's extensive and expensive efforts. Beginning no later than 2011 and on a continuing basis ever since, Alcon expended and continues to expend vast resources, in excess of $200 million to date, from original acquisition of relevant underlying rights, to development, production, marketing, and distribution of BR2049, to ongoing brand development and active policing of infringements, to development, production and distribution of numerous derivative works, including without limitation television series, comic books, and video games.

31. The Picture was theatrically released globally on a day-and-date basis in October 2017. It received an 89% positive audience reaction on well-known film review site Rotten Tomatoes. Among numerous other awards, BR2049 was nominated for five Academy Awards, and it won two: Best Cinematography and Best Visual Effects. IGN gaming website named BR2049 the Best Movie of the Year for 2017, the Golden Tomato Awards named it the Best Sci-Fi/Fantasy Movie of 2017, and the 2018 Saturn Awards named it the Best Science Fiction film. BR2049 is regularly identified as one of the best science fiction movies of all time on lists of such movies generated by journalists, critics, and consumers.

32. Alcon's efforts thus have generated robust consumer goodwill and brand recognition for BR2049 and its elements, specifically including the Exhibit

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A Image and the Exhibit B Images in the Lanham Act context. Both the Exhibit A Image and the Exhibit B Images have been, and still are, prominently used by Alcon in the marketing, promotion and publicity of BR2049.

33. The Exhibit A Image was the image used as the lead photo for numerous marketing, promotional and publicity press pieces about the Picture preceding its October 2017 initial theatrical release. It is still to this day the image that appears as the cover image to the official BR2049 marketing and promotional trailer as that trailer appears on YouTube. It is the back cover image for *The Art and Soul of Blade Runner 2049*, the coffee table book celebrating the Picture's visual design elements. It thus is one of the most iconic images from the Picture, and also one of the most commercially significant in a marketing sense. It immediately evokes BR2049 and everything the Picture stands for, without any words or other references. It is the image which Defendants specifically requested to use (and were refused by Alcon), as discussed further, *infra*.

34. Images from BR2049's same Las Vegas sequence also have been, and still are, used by Alcon for marketing, promotion and publicity for the Picture. As just one example, the front cover of the same *The Art and Soul of Blade Runner 2049* coffee table book about the Picture is from Exhibit B Images set (K's duster-garbed silhouette moving alone through misty orange-lit emptiness). Exhibit B Images and similar images from the same sequence in the Picture consistently appear at, or near, the top of search engine queries about the Picture. Exhibit B Images and those like them from the Las Vegas sequence -- of a silhouetted trench coat-wearing man moving through a misty orange-colored ruinous urban desert landscape -- are immediately evocative of BR2049, without any other cues or references required.

35. The Picture and its brand (including specifically the words "Blade Runner" even without the year "2049," when used in contexts that evoke BR2049 distinct from the 1982 Picture, and specifically including the Exhibit A Image and

Exhibit B Images) all have especially high resonance as to artificial intelligence, advanced automotive technology, and the combination of the two. K's spinner has been recognized culturally as one of the most famous vehicles in motion picture history. For example, the Petersen Automotive Museum in Los Angeles featured one of the full-scale prop models of K's spinner prominently in the museum's extended run of its "Hollywood Dream Machines: Vehicles of Science Fiction and Fantasy" special exhibit which ran from 2019 to 2020. The BR2049 K spinner was one of only three vehicles selected to be on the marketing one-sheet poster for the Petersen exhibit, along with the time-traveling DeLorean from the "Back to the Future" movies and a light cycle from "Tron: Legacy."

36. Numerous major automotive brands expressed substantial interest in a co-promotion brand partnership with Alcon on BR2049 prior to the Picture's initial theatrical release. K's spinner as it appears in BR2049 is in fact branded under a major global automotive brand. The contract price for that theatrical release co-promotion was well into the eight figures.

37. BR2049 is a commercially living property, with an ongoing active market for automotive brand partnerships in particular. For instance, as already mentioned, Alcon is currently in production on *Blade Runner 2099*, a BR2049-derived sequel or spin-off television series and Alcon is currently actively in the process of engaging with automotive brands for brand partnerships on that project.

The October 10, 2024 Tesla Marketing Event and Alcon's Express Denial of Defendants' License Requests and Clear Objections to Any Affiliation

38. Some of what happened among the Defendants is not yet known to Plaintiff, and likely will not be known until and unless Plaintiff is allowed discovery. Based on news reports, the nature of the event, and industry custom and practice with respect to studio lot events, and partial information provided by WBDI agents or representatives, Plaintiff makes the allegations in this paragraph 38 on information and belief and subject to the need for discovery: At some point

prior to October 10, 2024, Tesla and WBDI entered into a contractual agreement, the details of which are unknown to Alcon, but the essence of which necessarily included that WBDI would lease or license or otherwise provide studio lot space, lot access, infrastructure support and other resources to Tesla for the October 10, 2024 cybercab event and preparations leading up to it. The event involved substantial WBDI resources and lot access. For example, pre-event preparations were significant and started weeks or months prior, including Tesla vehicles repeatedly driving the studio lot to map it beforehand, so that about fifty fully autonomous Tesla cars could navigate the lot carrying Musk and event attendees on fully driverless rides as part of the event. The contract necessarily would have required substantial financial compensation to be paid by Tesla to WBDI, in at least the high six figures and possibly in seven figures.

39. Based on what actually happened at the event and the communications from WBDI agents and representatives to Alcon on the day of the event, as well as the absence of any substantial brand affiliation negotiation communications to Alcon at earlier dates or at all, Alcon is informed and believes and subject to the need for discovery thereon makes the allegations in this paragraph 39: The Tesla-WBDI event contract (or another associated contract) included a promotional element or elements, whereby WBDI allowed or possibly even required Tesla expressly to affiliate the cybercab with one or more motion pictures from WBDI's motion picture library, or the motion picture library of WBDI's subsidiary Warner Bros. Pictures, a division of WB Studio Enterprises Inc. ("Warner Bros. Pictures").

40. Warner Bros. Pictures was Alcon's domestic distributor for the 2017 theatrical release of BR2049 and still has some domestic distribution rights, but not without limitations and restrictions. Warner Bros. Pictures has some limited and ongoing "clip licensing" rights in the domestic market only, and not at all for a livestream television feed. Moreover, neither Warner Bros. Pictures nor any other WBDI entity owns the copyright in BR2049 or any of the Picture's marks or

goodwill. No WBDI entity has or ever had any non-domestic rights or permissions for the Picture. Thus, neither Warner Bros. Pictures nor any other WBDI entity has or ever had sufficient rights to allow Tesla to exploit BR2049 or any of its elements, marks or goodwill in connection with the globally livestreamed cybercab reveal event.

41. Warner Bros. Pictures has a longstanding course of dealing with Alcon generally and on BR2049 specifically. Pursuant at least to that course of dealing, and custom and practice in the industry, Warner Bros. Pictures is required to, expected by Alcon to, and in fact actually does consult with Alcon and seek Alcon's approval prior to brand affiliation licensing of any BR2049 elements for, *inter alia*, a substantial, high-profile, and highly commercial brand affiliation, especially if the affiliation is potentially controversial or politically charged, and even if for only the domestic market.

42. Neither Warner Bros. Pictures nor any other WBDI entity or representative ever communicated with Alcon at all about any potentially contemplated BR2049 brand affiliation with the Tesla cybercab or the event. (Even the communications that occurred from WBDI's representative to Alcon on the day of the event were disingenuously in the context of a purported relatively routine "clip license" request, never as the much more significant brand affiliation really at issue.) That failure is inconsistent with the above long-standing course of dealing, and with custom and practice in the industry.

43. Based on what actually happened at the event and the communications to Alcon from WBDI representatives on the day of the event and since, as well as the absence of certain communications to Alcon at earlier dates or at all, Alcon is informed and believes and, subject to the need for discovery, makes the allegations in this paragraph 43: Musk communicated to WBDI at some point in the event planning process, that Musk specifically wanted to associate the cybercab and Tesla with BR2049. Musk believed (incorrectly) that BR2049 was part of the

relevant WBDI motion picture library subject to the Tesla-WBDI event agreement, or otherwise that WBDI could grant Tesla worldwide BR2049 exploitation rights to affiliate BR2049 with the cybercab during the event. Among other BR2049 brand affiliation rights, Tesla and Musk asked WBDI for specific permission and rights to use the Exhibit A Image. The specific Tesla employees, contractors or agents tasked with executing on these issues included David Adametz ("Adametz") (a video production marketing executive at Tesla) and Shara Lili ("Lili"), a Manager of Video Content for Tesla (also a video production marketing executive at Tesla). One or both of Adametz and Lili were in direct contact with WBDI executives about the BR2049 brand affiliation, and one or both of Adametz and Lili were also in direct or indirect contact with Musk about it, too.

44. Based on similarly-founded information and belief, and subject to the need for discovery, Alcon further makes the allegations in this paragraph 44: At the request of one or all of the Defendants (possibly made by Adametz or Lili on behalf of Tesla and Musk), WBDI's shared services rights clearance department commenced clearance checks on the planned BR2049 brand inclusion in the October 10, 2024 cybercab event.[2] For reasons not yet fully known to Alcon, WBDI's shared services rights clearance department commenced (incorrectly) to clear the use as only involving a need for a "clip license" (typically a relatively

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[2] Shared services departments at Hollywood studios and their affiliated larger corporate conglomerates have personnel (often legal, financial, accounting, or human resources professionals) who may be ostensibly employed by, receive their paychecks from, and have titles only with, a single corporate entity in the larger conglomerate, but who in fact render services upon request or direction to a range of entities within the conglomerate. Here, Plaintiff is informed and believes and on that basis alleges that the WBDI shared services licensing department personnel involved in this matter included an individual executive who is based in Burbank, California and ostensibly an employee of Warner Bros. Pictures, but who on request or direction renders licensing and clearance services to WBDI or on its behalf.

small dollar value and innocuous type of rights license and distinct from a brand partnership or brand affiliation license), and only to the Exhibit A Image.

45. Alcon does not yet know all of what actually happened internally at WBDI, or in WBDI communications with Musk and Tesla, as to why none of them ever contacted Alcon about the larger brand affiliation proposal that was really effectively at issue. Alcon is unlikely to know without litigation discovery. However, Alcon does know at least the following three things: a) the magnitude and nature of the cybercab event and the contemplated BR2049 use in it, meant that the issue was well beyond a mere "clip license," but rather a more substantive brand affiliation, requiring significant business discussions with Alcon to proceed; b) none of the Defendants or anyone acting on their behalves ever made any contact with any Alcon representative about the cybercab event prior to the actual day of the event, not even for a "clip license"; and c) none of them ever made any larger brand affiliation outreach to Alcon at all, even on the day of the event. Instead, Alcon learned about Defendants' interest in BR2049 on the day of the event, a mere six hours prior to the event's scheduled commencement, as follows:

46. At shortly after 12:00 p.m. PDT (noon) on October 10, 2024, the day of the event, a WBDI shared services clip licensing executive based in Burbank and engaged in the WBDI-Tesla-Musk BR2049 rights clearance process realized that WBDI's shared services licensing personnel could not ever clear the proposed BR2049 cybercab event affiliation without reaching out to Alcon and/or Alcon's international distribution partner, including at a minimum because the cybercab event required global rights, not only domestic, since the event would be livestreamed globally. On information and belief, the WBDI shared services clip licensing executive communicated the problem directly or indirectly to WBDI executives and to Tesla's Adametz or Lili, and informed them that either Alcon and/or Alcon's international distribution partner would have to grant permissions,

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or the BR2049 affiliation in the event could not occur, since international rights were involved.

47. The WBDI shared services clip licensing executive then sent an email "heads up" to their counterpart at Alcon's international distribution partner that they might be getting an emergency rush basis BR2049 rights permission request for "a Tesla even[t] happening today on our lot (sorry)." The shared services licensing executive at Alcon's international distribution partner communicated that they would be unable to help without Alcon's direct involvement, resulting in contact finally being made with Alcon for the first time (just several hours before the event's scheduled commencement), by looping in an Alcon legal and business affairs executive into a portion of the clearance communication chain.

48. In a resulting combination of telephonic and email communications among Alcon's legal department and the above-referenced two shared services clip licensing executives at WBDI and Alcon's international distribution partner, Alcon sought further information about the proposed BR2049 rights actually being requested. Although the information given was sparse, Alcon learned enough information for Alcon's co-CEOs to consider the proposal and firmly reject it, which they did. By no later than about 2:00 p.m. PDT on October 10, 2024, by a combination of emails and telephone communications, Alcon's legal and business affairs executive communicated back to the WBDI shared services clip licensing executive and the international distributor shared services clip licensing executive that: a) Alcon refused all permissions for the October 10, 2024 WBDI-Tesla event; b) Alcon was adamant that under no circumstances should there be any BR2049 affiliation, or any other Alcon affiliation, express or implied, with Tesla, X, Musk or any Musk-owned company in the course of the October 10, 2024 event, or ever (including a requirement to note Alcon's position and directions in Warner Bros. Pictures and WBDI databases); and c) the two shared services clip licensing executives were to please relay both of these a) and b) messages back to WBDI,

Tesla and X, including so that there would be no mistakes in the conduct of the event. Both of the shared services clip licensing executives reported back to Alcon's legal and business affairs executive that they had communicated both messages as requested. Alcon is informed and believes and thereon alleges that in fact they did.

49. Alcon is thus informed and believes and thereon alleges that by no later than about 2:00 p.m. PDT on October 10, 2024, WBDI, Tesla and X all knew and understood that Alcon had not only refused any permissions to use any BR2049 copyrighted elements in connection with the WBDI-Tesla event, but Alcon had also expressly and clearly objected to any express or implied BR2049 affiliation with the event, or with Tesla, Tesla's cybercab, Musk, or X.

50. Musk was personally doing the event presentation and would have to know what he was presenting and the parameters. Based on that reality and all the circumstances known to Alcon so far, Alcon is informed and believes, and on that basis and subject to the need for discovery, makes the allegations of this paragraph 50: At some point between about 2:00 p.m. PDT and the approximately 8:00 p.m. PDT actual start time of the event on October 10, 2024, Musk personally became aware of Alcon's permission denials and express objections (likely directly or indirectly through Adametz or Lili). He thus personally knew and understood that to incorporate BR2049 into the event presentation at all would be improper and an unauthorized misappropriation of BR2049 goodwill. He did it anyway.

Defendants' October 10, 2024 Intentional Copyright Infringement and Brand Misappropriation

51. The event was scheduled to begin at 7:00 p.m. PDT on October 10, 2024, but did not actually begin until about 8:00 p.m. PDT. In a brief introduction of a minute or less, a Tesla representative named "Franz" took the stage. Franz's only substantive remark was to note that the presentation was being made from the Warner Bros. lot, the home of many science fiction films that show visions of the

future (a clumsily transparent excuse to attach Tesla and the cybercab to Hollywood brands). Franz then quickly segued to saying that the event would involve Tesla showing a vision of the future, and who better than Musk to do it. The livestream then shifted to a combination of aerial shots and ground cameras showing a cybercab arriving at an on-lot theater, some distance away from the presentation stage building. Musk emerged from the theater and entered the cybercab after silently waving to a small crowd.

52. The livestream tracked the Musk-bearing cybercab from various camera vantage points as it autonomously slowly rolled him to the presentation stage building at another part of the lot. Musk exited and took the event stage. He spent about another minute on welcoming remarks and explaining that there were 20 cybercabs and another 30 fully autonomous and driverless Tesla Model Ys at the event that attendees would be able to take a ride in.

53. Then to commence the actual presentation, Musk said: "So you see a lot of sci-fi movies where the future is dark and dismal, where it's not a future you want to be in." As he said this, the event's global livestream feed changed to a full screen display of a presentation slide with an image of the Earth from space at sunrise, with the words "What Kind of World Do We Want to Live In?" This first slide stayed on the full-screen livestream feed for less than two seconds.

54. Then, the livestream full screen display shifted to Musk's second slide, which the livestream displayed for about 11 seconds. The second slide is an image that looks like a motion picture still photo (although it isn't) of a male figure seen from behind, with close-cropped hair, wearing a trench coat or duster, standing in almost full silhouette as he surveys the abandoned ruins of a city, all bathed in misty orange light. In the upper left corner the words "Not This" appear superimposed on part of the orange sky. Exhibit C is a screenshot of this second slide image from Musk's presentation ("Presentation Slide 2 Image").

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55. The Presentation Slide 2 Image was clearly intended to read visually either as an actual still image from BR2049's iconic sequence of K exploring the ruined Las Vegas, or as a minimally stylized copy of one (and it does read like one or both of these). From Alcon's examination, it seems likely to have been generated by copying the Exhibit A Image and the Exhibit B Images (or similar images from the Picture's Las Vegas sequence), and asking an AI image generation engine to make "an image from the K surveying ruined Las Vegas sequence of 'Blade Runner 2049,'" or some closely equivalent input direction. On information and belief, and subject to the need for discovery, Alcon alleges that in fact this is how the Presentation Slide 2 Image was generated, and for the bad faith intentional purpose of affiliating BR2049 and its goodwill with Tesla's cybercab, over Alcon's denial of permission and express objections.

56. On information and belief, and subject to the need for discovery, Alcon makes the allegations in this paragraph 56: The Presentation Slide 2 Image was generated in the above way by an employee or agent of one or more of WBDI, Tesla (possibly by Adametz or Lili), or even possibly by Musk himself, and this was done with knowledge of the improper nature and purpose of the image generation request. All of the Defendants participated in its creation, and in its display in the presentation at the event, from a WBDI-owned building and studio lot, on WBDI-owned video screens and otherwise using WBDI-owned technology infrastructure, operated by or in conjunction with Tesla employees, all acting in whole or in part subject to the direction and control of Musk, at least during the time of the event. Defendants all acted with the knowledge and understanding that the X livestream or other equivalent video record of the event would be retweeted, reposted, or otherwise picked up and redistributed tens of thousands or even millions of times across the United States and the world immediately and continuing for days after the event. In any event, all three of WBDI, Tesla and Musk knew and understood the unauthorized nature of the image and the improper

purpose behind it, and encouraged or otherwise lent their support to the improper endeavor. In the alternative, as to any and all Defendants who did not so actively participate, such Defendants ratified the conduct and knowingly accepted the benefits of it.

57. If there were any doubt that Defendants intended to evoke BR2049 with the Presentation Slide 2 Image and Musk's related remarks, Musk erased them with his voiceover comments during the approximately 11 seconds that the infringing Presentation 2 Image was completely filling the livestream screen. He said: "You know, I love 'Blade Runner,' but I don't know if we want that future. I believe we want that duster he's wearing, but not the, uh, not the bleak apocalypse." The Presentation Slide 2 Image then disappeared and Musk segued to talking about how what we all should want is a happier looking future, and how happy and joyful his vision of cities and highways filled with driverless robot cars will be and why.

58. Although Musk said the words "Blade Runner" without the year number (without "2049"), he clearly specifically meant to evoke BR2049 rather than the original 1982 Picture, and he was motivated to do so. The two films are clearly related, but BR2049 has its own distinct brand and secondary meaning, and BR2049's specific goodwill is far more relevant to Tesla's and Musk's cybercab pitch and product.

59. Although the 1982 Picture does prominently feature flying car "spinners," the cars in the 1982 Picture are not shown to be wholly or even partially autonomous, or even shown to employ artificial intelligence themselves in any way. None of the cars in the 1982 Picture play any role as a quasi-sentient companion to the Deckard lead character in the 1982 Picture, like K's spinner does for K in BR2049. Pointedly, then, if you are a company (or own one) specifically trying to market artificially intelligent, wholly or partially autonomous self-driving cars (as Tesla and Musk are), the 1982 Picture has little or no specifically relevant

context. In contrast, BR2049 has extremely relevant context and worldwide goodwill in precisely the areas of artificial intelligence, self-driving capability, and autonomous automotive capability that Tesla and Musk are trying to market.

60. Musk did successfully evoke BR2049 specifically, and that is true even though Musk only said the words "Blade Runner" without adding the year "2049. For the reasons detailed in the next paragraphs below, Musk's act of displaying the Exhibit C Image -- an image of a man in near-silhouette, with close-cropped hair and wearing a duster, while he surveys an orange-light-bathed ruined and abandoned cityscape -- and displaying it for 11 seconds while Musk talks about "Blade Runner" and a specifically "apocalyptic" future – that is all specifically evocative of BR2049, and not of the 1982 Picture.

61. While both the 1982 Picture and BR2049 show dystopian urban futures, only BR2049 has a specifically apocalyptic setting. Only BR2049 has an abandoned and ruined city (Las Vegas) that has suffered an event of extreme destruction (the detonation by terrorists of a dirty nuclear device). The ruined Las Vegas is where the most dramatically charged events of the BR2049 story take place (K's encounter with the long-lost Deckard). The setting has striking color design, cinematography and other visual elements: it is distinctly bathed in "apocalyptic" misty orange light, just like the Presentation Slide 2 Image and which the 1982 Picture does not have in any comparable scene. Throughout BR2049, there also are general references and story elements about civilization having semi-recently suffered a broader, apocalyptic nuclear conflict in the mid-range past, including electromagnetic pulse activity that destroyed many electronic records, making investigation of the past difficult.

62. In contrast, the 1982 Picture is set in a dystopian urban landscape of a then-futuristic 2019 Los Angeles, but the 1982 Picture's setting is specifically not apocalyptic. In the 1982 Picture, there has not been any dirty nuclear device, or nuclear electromagnetic burst which destroyed electronic records, or other

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apocalyptic destruction that has hit Los Angeles or Las Vegas or any other location. If anything, the urban setting of the 1982 Picture is the opposite of abandoned and ruined: it is overrun with too much ongoing industry and suffering from overpopulation. It is not a stark, lonely, misty, orange, dry, radiated desert ruin like BR2049's Las Vegas or the Presentation Slide 2 Image, but rather is an overcrowded neon urban prison, where the citizens are trapped in constant night plagued by perpetual rain and an ever-present bombardment of consumer advertising. In the 1982 Picture, neither the main character nor anyone else ever goes to any orange-colored post-apocalyptic ruined city or any other such location, in a duster or otherwise.

63. Musk thus very clearly meant specifically to evoke not the 1982 Picture, but rather BR2049 and everything that goes with it -- including artificially intelligent autonomous cars like the Tesla cybercab being pitched at the event. He successfully did.

64. Any argument that Musk and his co-Defendants only meant to talk broadly about the general idea of science fiction films and undesirable apocalyptic futures and juxtaposing them with Musk's ostensibly happier robot car future vision, and that they just used BR2049 by chance, without conscious awareness of and intent to appropriate BR2049's special secondary meaning in the context of trying to sell artificially autonomous cars, is not credible.

65. First, as detailed in foregoing paragraphs, there is a clear record that WBDI and Tesla were specifically interested in BR2049, as late as mere hours before the event, and not just any BR2049 Image, but the Exhibit A Image prominently featuring K's artificially intelligent autonomously capable spinner.

66. Second, if Musk by his presentation was only trying to use an exemplary science fiction movie to make a rhetorical point, there were much better choices actually in the WBDI library for him to reference, given what his point ostensibly was. Musk's ostensible point was "science fiction film futures look

bleak and not thinking enough about transportation technology risks that kind of apocalyptic future; I can help us do better with my cybercabs." If that was really the point he was trying to make, there are better films actually in the WBDI library to make it.

67. Every single one of the five "Mad Max" movies in WBDI's motion picture library ("Mad Max," "The Road Warrior," "Mad Max Beyond Thunderdome," "Fury Road," and "Furiosa: A Mad Max Saga") deals far more specifically than BR2049 with that ostensible message. Every one of the Mad Max movies is set in an apocalyptic future where gas-powered, non-autonomous vehicles not only played a part in bringing about civilization's end (wars over oil), but where gasoline and gas-powered non-autonomous cars continue to be what the remaining humans fight with and about in the post-apocalyptic wasteland. Any of those "Mad Max" movies in the WBDI library thus would have made much more sense to use, if the true purpose of referencing a specific film was to make a rhetorical point.

68. The entire opening and its forced references to science fiction films generally was never really for Musk to make a rhetorical point, though. Franz's and Musk's Hollywood film rhetoric was just a contrivance for something else more economically valuable to the Defendants. The WBDI lot location, and especially the strained science fiction film references, were all clearly an intentional effort to affiliate Tesla and its cybercab with Hollywood brands, and at a time when Musk and Tesla are on the outs with Hollywood creatives and brands. It was all about appropriating desirable Hollywood associations, and if possible, Hollywood associations with special resonance to artificial intelligence and strikingly-designed autonomous cars.

69. The "Mad Max" movies are great, and so are many other dystopian-future or apocalyptic-future movies actually in WBDI's library. But those movies don't have massive consumer goodwill specifically around really cool-looking

(Academy Award-winning) artificially intelligent, autonomous cars. BR2049 does. It was the best and most specifically relevant film brand for Tesla to appropriate, or one of the best. Musk and the other Defendants specifically wanted BR2049's goodwill for the event, not that of any other science fiction movie, and when Alcon did not give it to them, they stole it.

70. The theft infringed Alcon's copyright in the Picture, and created actual confusion or a likelihood of it in the relevant marketplaces about BR2049 branding, including Alcon's current marketing efforts with potential auto brand partners on the *Blade Runner 2099* television series, among other marketplace confusion and brand damage. Alcon needs relief.

FIRST CLAIM FOR RELIEF

***Direct Copyright Infringement in Violation of 17 U.S.C. § 501,* et seq.**

Against Defendants WBDI, Tesla and Musk

71. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and in each paragraph of this Complaint hereafter, as if set forth herein in full.

72. To the extent any of the allegations or theories in this First Claim for Relief are inconsistent with other allegations or theories pled in this Complaint, they are pled in the alternative.

73. Plaintiff is the author and copyright owner of the motion picture "Blade Runner 2049," registered with the United States Copyright Office on October 6, 2017, registration number PA0002056792.

74. The images from BR2049 appearing in Exhibits A and B attached hereto, and similar images from the "K explores ruined Las Vegas" visual sequence of the film, are protectible elements of the motion picture, and are at the creative core or "heart of the work."

75. Defendant WBDI, Tesla and Musk are direct infringers, in that they directly reproduced, created unauthorized derivative works of, displayed,

distributed, and publicly performed protectible elements of BR2049 without Plaintiff's license, authorization, or permission. Specifically, Defendants WBDI, Tesla (perhaps specifically by Adametz or Lili) and Musk generated or caused the generation of the Presentation Slide 2 Image attached hereto as Exhibit C, in connection with the October 10, 2024 Tesla cybercab product reveal event co-conducted by WBDI, Tesla and Musk. Plaintiff is informed and believes and on that basis, and subject to the need for discovery, alleges that to generate the Presentation Slide 2 Image, Defendants WBDI, Tesla and Musk or the image generation tool that they used engaged in unauthorized copying and/or distribution and/or display of protectible elements of BR2049, specifically images of the type described in paragraph 74 above.

76. The Presentation Slide 2 Image is in any event an unauthorized derivative work of BR2049. Defendants WBDI, Tesla and Musk caused the infringing Presentation Slide 2 image to be distributed, displayed and publicly performed at the Tesla-WBDI event at the Burbank, California lot to an audience large enough to constitute a public performance at that location, and also across the United States and around the world, and by the thousands of retweets and repostings of the event video feed that Defendants WBDI, Tesla and Musk knew would inevitably happen.

77. The foregoing acts of Defendants WBDI, Tesla and Musk infringed upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce, create derivative works, display, distribute and publicly perform BR2049 and its protectible elements. Such actions and conduct constitute copyright infringement in violation of 17 U.S.C. § 501, *et seq.*

78. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and registered the exclusive rights and privileges in and to the copyrights of the above-referenced work in accordance with 17 U.S.C. § 408.

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79. Plaintiff suffered damages as a result of Defendants' unauthorized use of BR2049 and its protectible elements.

80. Plaintiff is entitled to temporary, preliminary and/or permanent injunctive relief, pursuant to 17 U.S.C. § 502(a).

81. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to impoundment of all materials used to achieve the infringement, and records documenting Defendants' exploitation of their infringements, including without limitation all materials used by Defendants or any image generation tool employed by them to generate the Presentation Slide 2 Image.

82. Plaintiff is entitled to recover and seeks its actual damages and any additional profits of Defendants WBDI, Tesla and Musk attributable to the infringements, under 17 U.S.C. § 504(b).

83. Plaintiff also is entitled to elect to recover and seek statutory damages under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than $750 or more than $30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and believes and on that basis alleges that Defendants' acts of copyright infringement, as alleged above, were willful, intentional, and malicious. Such acts subject Defendants to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to $150,000 per infringement.

84. Within the time permitted by law, Plaintiff will make its election between actual damages and profit disgorgement, or statutory damages.

85. Plaintiff also is entitled to a discretionary award of attorney fees under 17 U.S.C. § 505.

86. Plaintiff seeks or reserves the right to seek any or all of the above forms of relief, in addition to prejudgment interest to the extent legally available and Plaintiff's costs.

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SECOND CLAIM FOR RELIEF

***Vicarious Copyright Infringement in Violation of 17 U.S.C. § 501,* et seq.**

Against Defendants WBDI, Tesla and Musk

87. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and each paragraph of this Complaint hereafter, as if set forth herein in full.

88. To the extent any of the allegations or theories in this Second Claim for Relief are inconsistent with other allegations or theories pled in this Complaint, they are pled in the alternative.

89. If Defendants WBDI, Tesla and Musk are not each liable as direct infringers of BR2049, they are secondarily liable for the infringements directly committed by individual agents, contractors, or other infringers presently unknown (the "Direct Infringers") under the vicarious infringement doctrine.

90. Defendants WBDI, Tesla and Musk had the right and ability to supervise the infringing activity that all the Direct Infringers committed. The facts and circumstances of the event make clear that at the very least Tesla and Musk could have refrained from including the Presentation Slide 2 Image in the presentation or told their agents, employees or contractors not to include it. Defendant WBDI was using its shared services licensing department to perform clearance work for the presentation at least related to film references. Plaintiff is thus informed and believes and on that basis, and subject to the need for discovery, alleges that WBDI had the right and ability to tell the Direct Infringers that their infringing conduct was not acceptable and could not be part of the presentation. To the extent that the Direct Infringers were individual agents, employees or contractors of WBDI, then WBDI plainly had the right and ability to supervise the Direct Infringers' infringing conduct.

91. Defendants obtained some direct financial benefit from the infringement of Plaintiff's rights in BR2049 by the Direct Infringers. The

infringements of BR2049 in question are the Direct Infringers' generation of the Presentation Slide 2 Image and the way that it was used during the event and afterward in livestream exploitation, distribution and ongoing display and public performance. The Presentation Slide 2 Image was and is pivotal to Defendants WBDI, Tesla and Musk effectively misappropriating BR2049's goodwill to advance both (a) the consumer appeal of the joint Tesla-WBDI cybercab presentation itself (which presentation was essentially an infomercial), and (b) consumer and investor interest in Tesla and the cybercab.

92. Based on past actual brand affiliation contracts for automotive partners on BR2049, Tesla likely would have had to make significant expenditures – at least in the mid-six-figures (at least $500,000) and possibly into the eight figures ($10 million or more) to obtain a BR2049 brand affiliation with Tesla and the cybercab at market value, if Alcon had even been willing to do it at all. The copyright infringements here facilitated allowing Tesla to save this expenditure.

93. With respect to Musk, Plaintiff is informed and believes and on that basis, and subject to the need for discovery, alleges that Musk believed that the affiliation of BR2049 with the Tesla cybercab during the product reveal increased the likelihood that the product reveal event would have a positive response with actual and potential investors in Tesla, such that Tesla's stock price would increase, which was a significant purpose of the Tesla-WBDI event. On the same basis and for the same reasons, Plaintiff further alleges that Musk similarly believed that the BR2049 reference and affiliation would increase consumer interest in Tesla cybercabs, and that Tesla would sell more of them or experience more pre-orders for them. Musk is not only the largest shareholder in Tesla, but his compensation as CEO is directly tied to the Tesla stock price, as a substantial portion of Musk's compensation is grants of equity in Tesla. Musk thus believed he would directly benefit financially from the infringement.

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94. With respect to WBDI, Plaintiff is informed and believes and on that basis, and subject to the need for discovery, alleges that the event contract between WBDI and Tesla included a co-promotional or brand affiliation element, and that prior to October 10, 2024, Tesla and Musk believed and relied on (inaccurately) that WBDI could deliver a brand affiliation with BR2049. Plaintiff is informed and believes and on that basis, and subject to the need for discovery, alleges that when Tesla and Musk learned that was not true or not the same situation as they had believed, WBDI had a financial incentive to avoid any claims of breach of contract or adjustment of the contract price, and one way to do that was essentially to allow the fudging (questionable manipulation) of the situation by either suggesting, encouraging, or knowingly allowing Tesla and Musk's generation of and use of the infringing Presentation Slide 2 Image.

95. Accordingly, all Defendants had an incentive to permit infringement by the Direct Infringers.

96. The foregoing acts of Defendants WBDI, Tesla and Musk infringed upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce, create derivative works, display, distribute and publicly perform BR2049 and its protectible elements. Such actions and conduct constitute copyright infringement in violation of 17 U.S.C. § 501, *et seq.*

97. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and registered the exclusive rights and privileges in and to the copyrights of the above-referenced work in accordance with 17 U.S.C. § 408.

98. Plaintiff suffered damages as a result of Defendants' unauthorized use of BR2049 and its protectible elements.

99. Plaintiff is entitled to temporary, preliminary and/or permanent injunctive relief, pursuant to 17 U.S.C. § 502(a).

100. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to impoundment of all materials used to achieve and records documenting Defendants'

exploitation of, their infringements, including without limitation all materials used by Defendants or any image generation tool employed by them to generate the Presentation Slide 2 Image.

101. Plaintiff is entitled to recover and seeks its actual damages and any additional profits of Defendants WBDI, Tesla and Musk attributable to the infringements, under 17 U.S.C. § 504(b).

102. Plaintiff also is entitled to elect to recover and seeks statutory damages under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than $750 or more than $30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and believes and on that basis alleges that Defendants' acts of copyright infringement, as alleged above, were willful, intentional, and malicious. Such acts subject Defendants to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to $150,000 per infringement.

103. Within the time permitted by law, plaintiff will make its election between actual damages and profit disgorgement, or statutory damages.

104. Plaintiff also is entitled to a discretionary award of attorney fees under 17 U.S.C. § 505.

105. Plaintiff seeks or reserves the right to seek any or all of the above forms of relief, in addition to prejudgment interest to the extent legally available and Plaintiff's costs.

THIRD CLAIM FOR RELIEF

***Contributory Copyright Infringement in Violation of 17 U.S.C. § 501,* et seq.**

Against Defendants WBDI, Tesla and Musk

106. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and each paragraph of this Complaint hereafter, as if set forth herein in full.

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107. To the extent any of the allegations or theories in this Third Claim for Relief are inconsistent with other allegations or theories pled in this Complaint, they are pled in the alternative.

108. If Defendants WBDI, Tesla and Musk are not individually liable as direct infringers of BR2049, they are secondarily liable for the infringements committed by the Direct Infringers under the contributory infringement doctrine.

109. Defendants WBDI, Tesla and Musk had, or should have had, knowledge of the infringements of the Direct Infringers. Tesla and Musk plainly intentionally included the Presentation Slide 2 Image in the October 10, 2024 Tesla presentation, and they could plainly see that it was not an actual still image from BR2049, but rather a stylized copy likely to found infringing. They also all knew that Alcon had refused permission to use BR2049 or any of its elements in the presentation or in connection with it. Defendant WBDI was using its shared services licensing department to perform clearance work for the presentation at least related to motion picture references. Plaintiff is informed and believes and on that basis and subject to the need for discovery alleges that if WBDI or its personnel were not Direct Infringers, WBDI's shared services licensing clearance department was at least being shown image options, including viewing the proposed Presentation Slide 2 Image in advance of the event, and thus knew about the infringement.

110. Defendants WBDI, Tesla and Musk either materially contributed to or induced the infringements. Tesla and Musk materially contributed to the direct infringements by including the Presentation Slide 2 in Musk's presentation. Plaintiff is informed and believes and on that basis and subject to the need for discovery alleges that Musk was determined specifically to reference BR2049 and an image from it in the presentation, and his determination induced the direct infringements by the Direct Infringers of creating the infringing Presentation Slide 2 Image. Defendant WBDI materially contributed to the direct infringements at the

very least in that the event display, distribution and public performance aspects of the infringement occurred at WBDI's Burbank, California studio lot, and with the use and support of WBDI's facilities and technology. Plaintiff is informed and believes and on that basis, and subject to the need for discovery, alleges that WBDI induced the infringement by convincing or encouraging the Direct Infringers and Tesla and Musk that Alcon's denial of any BR2049 permissions could be circumvented by generation and use of an AI-generated copy of iconic BR2049 imagery, as Alcon alleges the Presentation Slide 2 Image to be.

111. The foregoing acts of Defendants WBDI, Tesla and Musk infringed upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce, create derivative works, display, distribute and publicly perform BR2049 and its protectible elements. Such actions and conduct constitute copyright infringement in violation of 17 U.S.C. § 501, *et seq.*

112. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and registered the exclusive rights and privileges in and to the copyrights of the above-referenced work in accordance with 17 U.S.C. § 408.

113. Plaintiff suffered damages as a result of Defendants' unauthorized use of BR2049 and its protectible elements.

114. Plaintiff is entitled to temporary, preliminary and/or permanent injunctive relief, pursuant to 17 U.S.C. § 502(a).

115. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to impoundment of all materials used to achieve and records documenting Defendants' exploitation of, their infringements, including without limitation all materials used by Defendants or any image generation tool employed by them to generate the Presentation Slide 2 Image.

116. Plaintiff is entitled to recover and seeks its actual damages and any additional profits of Defendants WBDI, Tesla and Musk attributable to the infringements, under 17 U.S.C. § 504(b).

117. Plaintiff also is entitled to elect to recover and seeks statutory damages under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than $750 or more than $30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and believes and on that basis alleges that Defendants' acts of copyright infringement, as alleged above, were willful, intentional, and malicious. Such acts subject Defendants to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to $150,000 per infringement.

118. Within the time permitted by law, Plaintiff will make its election between actual damages and profit disgorgement, or statutory damages.

119. Plaintiff also is entitled to a discretionary award of attorney fees under 17 U.S.C. § 505.

120. Plaintiff seeks or reserves the right to seek any or all of the above forms of relief, in addition to prejudgment interest to the event legally available and Plaintiff's costs.

FOURTH CLAIM FOR RELIEF

False Endorsement in Violation of 15 U.S.C. § 1125(a)(1)(A) against All Defendants

121. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and each paragraph of this Complaint hereafter, as if set forth herein in full.

122. To the extent any of the allegations or theories in this Fourth Claim for Relief are inconsistent with other allegations or theories pled in this Complaint, they are pled in the alternative.

123. Alcon owns the "Blade Runner 2049" property and that includes marks and elements that have goodwill and secondary meaning within the meaning of the Lanham Act. Among other such elements, "Blade Runner 2049," and the words "Blade Runner" in contexts that refer to or include the BR2049 motion picture (such as, for example, the words "Blade Runner" not followed by the

number "2049," but alongside iconic images from the BR2049 motion picture, or other callouts to specific scenes or elements of BR2049, including images like Exhibits A, B and C), and many specific elements of the BR2049 motion picture (such as particularly iconic or memorable images from the Picture), have achieved secondary meaning within the meaning of the Lanham Act and at the level of famous marks.

124. Certain images and visual sequences from the Picture have secondary meaning on their own, immediately evoking BR2049, and with their own commercial marketing history and significance. The Exhibit A Image and the Exhibit B Images are such images.

125. Defendants Tesla and Musk have engaged in false representations which are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Tesla and Musk with Alcon or as to the sponsorship or approval of Tesla's or Musk's goods, services, or commercial activities by Alcon.

126. Plaintiff alleges that Tesla and Musk engaged in the following specific conduct that together constituted false statements that constituted false representations of the type described in the foregoing paragraph 124: the conduct and statements made by Tesla and Musk at the October 10, 2024 Tesla-WBDI event as described in paragraphs 50-69 above.

127. Tesla's and Musk's unauthorized use of, and references, to Alcon's BR2049 marks and secondary meaning elements had and have the effect of falsely representing that Tesla's and Musk's goods and services are licensed, sponsored, endorsed, or otherwise authorized by Alcon.

128. Tesla's and Musk's conduct is likely to cause confusion or mistake and to deceive consumers and/or Alcon's relevant actual and potential business partners as to the endorsement, sponsorship, affiliation, connection, or association of Alcon with Tesla's and Musk's services and products. In this context, Alcon's

relevant business partners include automotive brands with potential interest in brand affiliations with BR2049, including without limitation with the BR2049-based *Blade Runner 2099* television series currently in production by Alcon. They also include business partners in the Hollywood talent pool market where Alcon is active on an everyday basis, and which Hollywood talent pool market generally is less likely to deal with Alcon, or parts of the market may be, if they believe or are confused as to whether, Alcon has an affiliation with Tesla or Musk.

129. Tesla and Musk engaged in the above conduct intentionally and in bad faith, conspiring to and then executing a fraudulent scheme falsely to create a purported justification or excuse to feature Alcon's BR2049 prominently at the outset of Tesla's and Musk's cybercab product reveal presentation, and without paying Alcon any fee for doing so, for the purpose of using BR2049's goodwill to increase the interest level and cache of the new Tesla product pitch and product.

130. All of the foregoing false endorsement uses of Alcon's BR2049 marks and goodwill were commercial speech, and not subject to any defense predicated on the nature of the use being a non-commercial use or non-commercial speech. Specifically, some or all of Tesla's and Musk's speech was either (a) core commercial speech in that it proposes a commercial transaction, or in the alternative, (b) was nonetheless commercial for purposes of false endorsement law and Plaintiff's claims herein, in that the communications were advertisements, made reference to a specific product, and the speaker had an economic motivation for the communication, all within the meaning of *Bolger v. Youngs Drugs Products Corp.*, 463 U.S. 60 (1983) and its progeny.

131. As a direct and proximate result of Tesla's and Musk's wrongful actions, Alcon has suffered damages in an amount to be proven at trial, but in excess of the jurisdictional minimum.

132. Alcon further alleges that Tesla's and Musk's unauthorized use of Alcon's BR2049 marks and secondary meaning elements will continue unless and

until Tesla and Musk are enjoined. Alcon has no adequate remedy at law to prevent Tesla and Musk from continuing to wrongfully violate Alcon's rights, and Alcon will suffer irreparable harm unless Defendants are enjoined from continuing their wrongful conduct.

133. Plaintiff is informed and believes and on that basis alleges that if afforded a reasonable opportunity for discovery, discovery will show that Defendant WBDI conspired with Tesla and Musk to participate in the above conduct, without Alcon's express written or oral consent, and over Alcon's express refusals and objections, for purposes of trade or for other commercial or advertising purposes, and took actions intended to further that conspiracy, such as, among other things:

a. Attempting to justify use of Alcon's BR2049 brand by advancing a sham "clip licensing" scheme;

b. Generating the infringing Presentation Slide 2 Image and/or encouraging Tesla and Musk to use it; and

c. Intentionally and purposefully not engaging with Alcon at all about a potential brand affiliation, and only engaging with Alcon in any way about the BR2049 use on the day of the event.

134. Plaintiff is informed and believes and on that basis alleges that if afforded a reasonable opportunity for discovery, discovery will show that Defendant WBDI aided and abetted Tesla's and Musk's Lanham Act violations described herein, including in that WBDI aided, encouraged and/or lent meaningful support to Tesla and Musk before, during or after Tesla's and Musk's violations, and with knowledge by WBDI that the acts by Tesla and Musk were improper.

135. Defendants all had actual knowledge of the wrongfulness of their conduct and the high probability that such acts would cause injury and/or damage to Plaintiff. Despite their knowledge, Defendants intentionally pursued their course of conduct, resulting in injury or damage to Plaintiff.

Prayer for Relief

WHEREFORE, Plaintiff prays judgment be entered in its favor and against Defendants, and each of them, as follows:

1. On the First Claim for Relief for Copyright Infringement:
    a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying, distributing, selling, or offering to sell BR2049 or protectible elements thereof in connection with Tesla or Musk, or making derivative works thereof for such purposes.
    b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Presentation Slide 2 Image and underlying materials used in violation of Plaintiff's copyrights—including digital copies or any other means by which they could be used again by the Defendants without Plaintiff's authorization—as well as all related records and documents.
    c. For actual damages and all profits that Defendants derived from the unauthorized use of BR2049 or, where applicable and at Plaintiff's election, statutory damages.
    d. For an award of attorneys' fees.
    e. For an award of pre-judgment interest as allowed by law.
    f. For costs of suit.
    g. For such further relief as the Court deems just and proper.
2. On the Second Claim for Relief for Vicarious Copyright Infringement:
    a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying, distributing, selling, or offering to sell BR2049 or protectible elements thereof in connection with Tesla or Musk, or making derivative works thereof for such purposes.

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b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Presentation Slide 2 Image and underlying materials used in violation of Plaintiff's copyrights—including digital copies or any other means by which they could be used again by the Defendants without Plaintiff's authorization—as well as all related records and documents.

c. For actual damages and all profits that Defendants derived from the unauthorized use of BR2049 or, where applicable and at Plaintiff's election, statutory damages.

d. For an award of attorneys' fees.

e. For an award of pre-judgment interest as allowed by law.

f. For costs of suit.

g. For such further relief as the Court deems just and proper.

3. On the Third Claim for Relief for Contributory Copyright Infringement:

a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying, distributing, selling, or offering to sell BR2049 or protectible elements thereof in connection with Tesla or Musk, or making derivative works thereof for such purposes.

b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Presentation Slide 2 Image and underlying materials used in violation of Plaintiff's copyrights—including digital copies or any other means by which they could be used again by the Defendants without Plaintiff's authorization—as well as all related records and documents.

c. For actual damages and all profits that Defendants derived from the unauthorized use of BR2049 or, where applicable and at Plaintiff's election, statutory damages.

d. For an award of attorneys' fees.

e. For an award of pre-judgment interest as allowed by law.

f. For costs of suit.

g. For such further relief as the Court deems just and proper.

4. On the Fourth Claim for Relief (False Endorsement in Violation of 15 U.S.C. § 1125(a)(1)(A))

1. For injunctive relief, including without limitation for an order mandating that Defendants cease any further promotional or advertising use of BR2049; that Defendants place a corrective notice or disclaimer on the event live feed and all copies thereof putting viewers on notice that the portions of the event referencing BR2049 false and misleading and that BR2049 and Alcon have no relationship or affiliation with Tesla, Musk or the cybercab product; and an order mandating that Defendants cease to distribute any further copies of the event livestream that contains the BR2049 references and Presentation Slide 2.
2. For compensatory damages;
3. Defendants' profits;
4. Attorney fees;
5. Costs of suit;
6. Prejudgment Interest; and
7. Such other and further relief as the Court may deem just and proper.

DATED: October 21, 2024

ANDERSON YEH PC
Edward M. Anderson
Regina Yeh

Attorneys for Plaintiff
ALCON ENTERTAINMENT, LLC

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, on its claims against Defendants Tesla, Inc. ("Tesla"), Elon Musk ("Musk"), and Warner Bros. Discovery, Inc. ("WBDI"), Plaintiff Alcon Entertainment, LLC hereby demands a trial by jury of all matters triable to a jury.

DATED: October 21, 2024

ANDERSON YEH PC
Edward M. Anderson
Regina Yeh

Attorneys for Plaintiff
ALCON ENTERTAINMENT, LLC

EXHIBIT A

EXHIBIT B

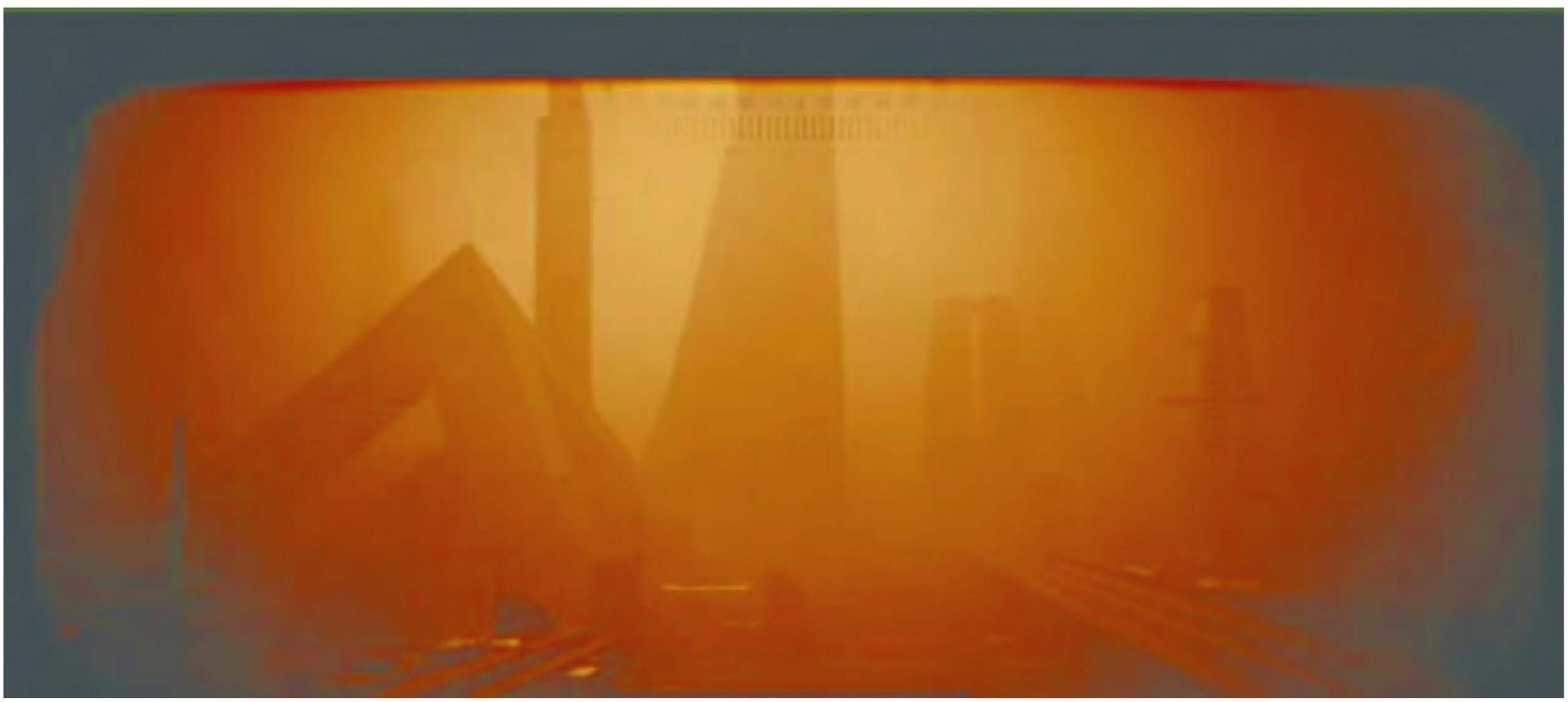

EXHIBIT C

NOT THIS
TESLA LIVE

Exhibit 31

[Filed Under Seal]

Exhibit 32

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALCON ENTERTAINMENT, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TESLA, INC., a Texas Corporation; ELON MUSK, an individual; WARNER BROS. DISCOVERY, INC., a Delaware Corporation;

Defendants.

CASE NO. 2;24-CV-09033-GW-RAO

PLAINTIFF ALCON ENTERTAINMENT, LLC'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT WARNER BROS. DISCOVERY, INC.'S MOTION TO DISMISS ORIGINAL COMPLAINT

Hearing Date: March 6, 2025
Time: 8:30 a.m.
Courtroom: 9D
Judicial Officer: Hon. George H. Wu

I. INTRODUCTION

Plaintiff Alcon Entertainment, LLC ("Plaintiff" or "Alcon") has exercised its available right to file a First Amended Complaint ("FAC") in response to defendants' motions to dismiss. Fed. R. Civ. P. 15(a)(1)(B) ("Rule 15"). If plaintiff has not yet amended, plaintiff may file an amended pleading as of right not later than 21 days of a defendant's filing of, *inter alia*, a Fed. R. Civ. P. 12(b)(6) ("Rule 12(b)(6)") motion (or 21 days of a defendant's filing of a responsive pleading, whichever is earlier). Plaintiff has not yet amended, no defendant has filed any responsive pleading, and it has only been 9 days since defendants filed their Rule 12(b)(6) motions, so Plaintiff's FAC was properly filed by right.

Nonetheless, in the interests of progressing the case, and because the Court does have discretion to treat the pending motions to dismiss as directed toward the FAC and still hear them, rather than take them off calendar and wait for defendants to address the FAC (*see, e.g.,* Stevenson, et al., *Rutter Practice Guide – Federal Civil Procedure Before Trial (Calif. and 9th Cir. Ed.)*, Ch. 9-D, § 9:263 [April 2024 Update]), Plaintiff files short oppositions to both of the pending Rule 12(b)(6) motions. This one is specifically directed to the motion of defendant Warner Bros. Discovery Inc. ("WBDI Motion").

II. FED. R. CIV. P. 12 (b)(6) STANDARDS AND RULES

Fed. R. Civ. P. 12(b)(6) ("Rule 12(b)(6)") motions are for legal challenges, not factual challenges. The court thus must take all factual allegations in the complaint that are not legal conclusions as true. *Godecke v. Kinetic Concepts, Inc.*, 937 F.3d 1201, 1205 (9th Cir. 2019); *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (2001). The court must construe the facts in the most favorable light to supporting a claim, and give plaintiff the benefit of all reasonable inferences from the express allegations. *Id.*; *U.S. v. Corinthian Colleges*, 655 F.3d 984, 991 (9th Cir. 2011); *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). The pleading

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must demonstrate only facial plausibility, meaning "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Godecke*, 937 F.3d at 1208 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Dismissal can lie if the facts, even viewed favorably to Plaintiff, are implausible; for "lack of a cognizable legal theory"; "the absence of sufficient facts alleged under a cognizable legal theory" (*Godecke*, 937 F.3d at 1208), or if the complaint itself alleges facts necessarily fatal to a claim (*Hearn v. R.J. Reynolds Tobacco Co.*, 279 F.Supp.2d 1096, 1102 (D. Az. 2003)).

The focus of Rule 12(b)(6) analysis "is the complaint," and, generally, the court "may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Corinthian Colleges*, 655 F.3d at 998-99; *Lee*, 250 F.3d at 688. Nonetheless, the court may consider external material proffered by the movant, pursuant to three isolated exceptions: 1) exhibits to the complaint; 2) documents referenced by the complaint, upon which it "necessarily relies," and the authenticity of which are undisputed; and 3) matters properly subject to judicial notice. *Corinthian Colleges*, 655 F.3d at 991, 998-999; *Lee*, 250 F.3d at 688.[1]

III. RULE 12(b)(6) COGNIZABLE FACTS IF THE PENDING MOTIONS GO FORWARD AS IS

The FAC supersedes the original Complaint ("OC"). *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. __, 2025 WL 96212 at *7 (January 15, 2025). The FAC's factual allegations are now controlling for all purposes, including Rule 12(b)(6) practice. The FAC pleads the same fundamental dispute alleged in the OC

[1] To go beyond these exceptions on movant-proffered extrinsic material, the court must treat the motion pursuant to Fed. R. Civ. Pro. 56 (summary judgment), including "giving all parties a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. Pro. 12(d); *Lee*, 250 F.3d at 688.

as broadly described above. Among other pleading adjustments, the FAC more finely particularizes which exclusive copyright rights Defendants violated and how.

It also makes clear that, although there is only a single infringed work for copyright infringement analysis (the BR2049 motion picture, just like the OC), Defendants Musk and Tesla created, and WBDI at least publicly displayed, two infringing works: (1) the AI-generated "Presentation Slide 2 Image" (Exhibit C to both the OC and FAC), and also (2) the overall We Robot video presentation (Exhibit 2 to the Omnibus Declaration of Chris Marchese in Support of Defendants' Motions to Dismiss) ("We Robot Work"), the infringing portions of which are the approximately eleven seconds where the Presentation Slide 2 image is displayed, including Musk's accompanying voiceover.

As to material beyond the FAC itself, Plaintiff sees three formal proffers by Defendants: (1) OC/FAC Exhibits A-C; (2) We Robot Presentation Video; and (3) Purported WBDI-Tesla Location Agreement. Plaintiff's position on each proffer is:

Defendants' Proffer 1 - FAC Exhibits A, B and C. Plaintiff agrees that the Court may consider all three exhibits on Rule 12(b)(6) practice, in that they are exhibits to the operative pleading. However, if and as it considers FAC Exhibits A and B in particular, the Court must accept what the FAC says they are, and may not credit or accept the substitutional and erroneous analytical sleight of hand the M&T Motion proposes on that point. The M&T Motion's entire substantial similarity comparison challenge to Plaintiff's direct copyright infringement claim is premised on the M&T Motion first improperly trying to change Plaintiff's pleading of the infringed work from the BR2049 motion picture to instead being the set of Exhibits A and B images ("Plaintiff's Images" in the M&T Motion), and then conducting substantial similarity analysis pursuant to the rules applicable when the infringed work is a photograph. Exhibits A and B are neither themselves the infringed work at issue, nor are they "photographs" in copyright terminology. The infringed work

is the larger BR2049 motion picture. Exhibits A and B are all examples of still images from that motion picture.[2] Not only does this mean they are not themselves the infringed work, they also are not the same as photographs, either analytically under copyright law[3], or as to what displaying them evokes in an audience, all as discussed further herein and in detail in the FAC.

Defendants' Proffer 2 – The We Robot Presentation (Exhibit 2 to Omnibus Declaration of Chris Marchese). Plaintiff agrees that the Court may consider the entire content of the We Robot Presentation on Rule 12(b)(6) practice. It is a document subject to the second exception allowing consideration of extrinsic materials if: "(1) the complaint refers to the document; (2) the document is central to plaintiff's claim; and (3) no party questions the authenticity of the document." *Corinthian Colleges*, 655 F.3d at 999; *Lee*, 250 F.3d at 688. For purposes of the pending Rule 12(b)(6) Motions, Plaintiff agrees this document satisfies all three requirements of the exception.

Defendants' Proffer 3 – WBDI-Tesla Location Agreement (Exhibit 1 to Declaration of Rachel Jennings in support of WBDI's MTD). This document appears to be by far the main basis for all of the arguments which WBDI makes in the WBDI Motion. Proffering it on Rule 12(b)(6) practice and trying to win the case without Plaintiff getting any discovery about the document is far outside the Rule 12(b)(6) procedure rules. Plaintiff had never seen the document until Defendants provided it in connection with filing the present Motions. Plaintiff has had no opportunity to conduct discovery or any meaningful investigation regarding it.

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[2] The OC Exhibit B included seven images; the FAC's Exhibit B keeps six of them and adds six more, and also marks them with their time codes in BR2049.

[3] Under the Copyright Act, a "photograph" is within the definition of "pictorial, graphic or sculptural work," while a "still image" of a "motion picture" is treated as part of a "motion picture" and thus under the "audiovisual work" definition. 17 U.S.C. 101.

Plaintiff thus generally does question the document's authenticity, meaning it does not satisfy any of the exceptions to consideration of extrinsic materials and the Court may not consider it.

Plaintiff respectfully further submits that even if the Court (improperly) decided to consider it, the document seems more affirmative of Plaintiff's theories than dispositive of them. Moreover, the characterizations that WBDI makes about the document, including without limitation as to what entity actually managed the WBDI-Musk-Tesla event relationship in practice, do not track with other information Alcon has about what occurred and why.

IV. THE WBDI MOTION MAKES NO CHALLENGE TO PLAINTIFF'S DIRECT COPYRIGHT INFRINGEMENT CLAIM

WBDI relies entirely on Musk and Tesla to make any arguments against Plaintiff's direct copyright infringement allegations. As discussed in Alcon's opposition to the M&T Motion, their direct copyright infringement arguments are fatally defective in numerous respects. The direct copyright infringement claim against WBDI cannot be dismissed; however, Alcon notes that in the FAC, Alcon has reduced its scope as to WBDI, relative to Musk and Tesla.

V. WBDI'S ARGUMENTS AGAINST THE FAC'S VICARIOUS COPYRIGHT INFRINGEMENT CLAIM FAIL

WBDI's arguments against vicarious copyright infringement liability all seem fundamentally premised on WBDI not accepting Alcon's pleading allegations as accurate, or mischaracterizing them, and on trying to get the Court to let WBDI out of the case by what is plainly an improper attempt to introduce an alleged document that, even if it were authentic, raises as many questions as it answers. Indeed, if that document is in fact a substantial part of the event contract between WBDI and Tesla, Alcon respectfully submits that the document hardly refutes Alcon's theories and allegations. Alcon's vicarious copyright infringement liability theory at core is

along the lines that Musk and Tesla agreed to enter into an event arrangement with WBDI that was highly lucrative for WBDI, and that, either as a formal term or as an informal back-scratching or customer courtesy, Musk and Tesla expected WBDI to throw in some motion picture brand affiliations for their car advertisement, and the one that they wanted most was BR2049; when Alcon told Musk and Tesla "no way," WBDI did not have the corporate fortitude to stand up fully to Musk and Tesla, given the financial stakes.

Alcon already has information that some things happened differently than WBDI is trying (improperly) to tell the Court in a speaking Rule 12(b)(6) motion. If the case makes it to discovery, Alcon expects other and different facts to come out than are being represented by WBDI.

VI. DEFENDANTS MAKE NO INDEPENDENT RULE 12(b)(6) CHALLENGE TO PLAINTIFF'S CONTRIBUTORY COPYRIGHT INFRINGEMENT CLAIM

The WBDI Motion makes no independent challenge to Alcon's contributory copyright infringement claim and so it necessarily survives.

VII. WBDI'S CHALLENGE TO PLAINTIFF'S LANHAM ACT CLAIM FAILS

WBDI's Lanham Act claim challenge primarily just adopts the M&T Motion's challenge. That challenge is largely based on mischaracterizing the complaint's allegations as presenting a situation like in *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003) or *Comedy III Productions, Inc. v. New Line Cinema*, 200 F.3d 593 (2000), where the goods or services that the defendant is alleged to be improperly marketing with the plaintiff's marks are expressive works, like a movie. Alcon's allegations are very plainly that Musk and Tesla are using Alcon's marks to sell cars. *Dastar* and *Comedy III* are entirely inapposite. *Lions Gate Ent., Inc. v. TD Ameritrade Servs. Co., Inc.*, No. 2:15-05024-DDP-E, 2017 WL

4621541 (C.D. Cal. Oct. 16, 2017) is, respectfully, a troubled opinion where the district court's reasoning is less than tight or persuasive, and which Alcon contends was wrongly decided. However, even if *Lions Gate* was not wrongly decided, the reason the district court ultimately rested on as to why it was ruling against Lions Gate on false affiliation and false advertising claims was that the good or service that TD Ameritrade was using the "Dirty Dancing" marks and goodwill to sell was financial services, and Lions Gate had not pled that Lions Gate was actually in the business of licensing *Dirty Dancing* for financial services. This is not that kind of case. Alcon has very clearly pled that it has an established business of licensing BR2049 for car partnerships.

To the extent that Alcon understands them correctly, the M&T Motion's (and so WBDI's) arguments that Alcon has not pled ownership of any relevant marks or trade dress is premised on arguing that a claim under 15 U.S.C. § 1125(a)(1)(A) can only be established by pleading and proving defendant's use of an exact mark owned by the Plaintiff. That is not the law. The relevant question, likelihood of confusion, is tested under all the circumstances, and looks broadly, not narrowly. *See, e.g.,* the "total effect of [the infringer's] product and package on the eye of the ordinary purchaser test" applied in cases such as *Warner Bros. Entertainment v. Global Asylum, Inc.*, 107 U.S.P.Q.2d 1910, 2012 WL 6951315 at *8 (C.D. Cal. 2012).

The M&T Motion also misstates the law in saying that Musk and Tesla's intention to trade off of Alcon's mark is not relevant in Lanham Act analysis. That is incorrect. The defendant's bad faith intent or willful intent is one of the factors in the applicable likelihood of confusion test, which is still the *Sleekcraft* test, *see, e.g., Network Automation, Inc. v. Advanced Systems Concepts, Inc.,* 638 F.3d 1137, 1145-46 (9th Cir. 2011).

As to WBDI's assertion that the conspiracy allegations against WBDI in the

Lanham Act claim should be taken out of the case, Alcon removed them from the FAC. The aiding and abetting allegations against WBDI in the Lanham Act claim are more solidly pled and they are enough.

VIII. CONCLUSION

If the Court goes forward with the WBDI Motion, it should be denied. If any part of it is granted, Alcon requests leave to further amend.

DATED: February 13, 2025

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff Alcon Entertainment, LLC, certifies that this brief contains 2,305 words, which complies with the word limit of L.R. 11-6.1.

Edward M. Anderson

Exhibit 33

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALCON ENTERTAINMENT, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TESLA, INC., a Texas Corporation; ELON MUSK, an individual; WARNER BROS. DISCOVERY, INC., a Delaware Corporation;

Defendants.

CASE NO. 2;24-CV-09033-GW-RAO

FIRST AMENDED COMPLAINT FOR:

1) **DIRECT COPYRIGHT INFRINGEMENT [17 U.S.C. § 501]**

2) **VICARIOUS COPYRIGHT INFRINGEMENT [17 U.S.C. § 501]**

3) **CONTRIBUTORY COPYRIGHT INFRINGEMENT [17 U.S.C. § 501]**

4) **FALSE AFFILIATION AND/OR FALSE ENDORSEMENT [15 U.S.C. § 1125(a)(1)(A)]**

DEMAND FOR JURY TRIAL

Plaintiff Alcon Entertainment, LLC ("Plaintiff" or "Alcon"), through its attorneys, hereby alleges its First Amended Complaint ("FAC") against defendants Tesla, Inc. ("Tesla"), Elon Musk ("Musk"), and Warner Bros. Discovery, Inc. ("WBDI") (collectively, "Defendants" and each separately a "Defendant"):

SUBJECT MATTER JURISDICTION

1. The Court has federal question subject matter jurisdiction per 15 U.S.C. § 1121(a), 28 U.S.C. §§ 1331 and 1338(a) and (b), and on the grounds that this is a civil action arising under the laws of the United States. Plaintiff seeks relief under the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101, *et al.*, and the Lanham Act, 15 U.S.C. §§ 1125(a)(1)(A), in interstate commerce.

SUMMARY OF DISPUTE

2. This is a case about a car maker improperly borrowing the storytelling power of a Hollywood movie for a car advertisement. That is an old, long-prohibited kind of scheme. In a sorcerer's apprentice kind of way, Musk and Tesla opened their artificial intelligence spell book to do it faster and more cheaply than perhaps any car maker had before them. However, the fact that artificial intelligence ("AI"), in its ubiquity, now makes it so much faster and easier for scurrilous actors to violate creator rights often simply means old wrongs are just dressed up in new twenty-first century clothes. Such is the case here.

3. Defendants requested permission to use an iconic still image (Exhibit A) from Alcon's "Blade Runner 2049" motion picture ("BR2049" or the "Picture") to promote Tesla's new fully autonomous cybercab in an October 10, 2024 event titled "We Robot." The event was to be, and was in fact, livestreamed worldwide from WBDI's Burbank, California studio lot. When Alcon was informed just hours prior to the commencement of the event that Defendants wanted BR2049 to somehow be wrapped into it, Alcon refused all permissions. More than that, Alcon adamantly objected to Defendants suggesting any affiliation whatsoever between BR2049 or Alcon on the one hand, and Tesla, Musk or any Musk-owned company,

on the other. Musk and Tesla used an admittedly AI-generated image to do it anyway, and WBDI facilitated or ratified the bad conduct.

4. Musk and Tesla wanted to leverage BR2049 to advertise cars, specifically including BR2049's main character and the Picture's iconic "Las Vegas Sequence." In the sequence, the artificially intelligent android main character K (played by Ryan Gosling) explores the irradiated, orange-lit ruins of a post-apocalyptic Las Vegas, seeking answers to existential questions about his own past. He also seeks the truth about the human-AI social compact in the Picture's story: a human-as-god-like-master/AI android-as-slave compact which the Picture both presents and calls into question. In Las Vegas, K hopes to find and confront the long-lost Deckard -- the lead character from the original 1982 "Blade Runner" motion picture ("1982 Picture"), played in both works by Harrison Ford. Exhibit B shows sample still images from BR2049's Las Vegas Sequence.

5. After Alcon refused permission to use the Exhibit A still image, Musk and Tesla used an AI image generator to create their own near-photo-realistic illustration of K exploring the ruined Las Vegas. (Exhibit C.) Musk put Exhibit C into his presentation as the second slide, and displayed it full screen for 11 seconds on the global livestream feed as his presentation opener. Lest anyone in the live or livestream audience not understand what Exhibit C was a picture of, Musk in his opening voiceover clearly identifies the image as an illustration of the "Blade Runner" movie set in a world which has suffered a "bleak apocalypse," where "he" (meaning the particular blade runner in question) is wearing a "duster" (trench coat) while he surveys the distinctly orange-lit ruins of a city in the apocalyptic space. That description, especially in connection with the visual elements present in Exhibit C, only matches a single motion picture in all of Hollywood, or anywhere else: BR2049. There is also only one blade runner character that fits that description: K.

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6. Musk tried awkwardly to explain why he was showing the audience a picture of BR2049 and K and talking about them, when he was supposed to be talking about his new product. He really had no credible reason, or none that doesn't come back to wanting to borrow the storytelling power and expression of that particular Hollywood motion picture to sell cars and the car company. Musk ostensibly invited the global audience to think about the cybercab's possibilities in juxtaposition to BR2049's fictional future. But it all exuded an odor of thinly contrived excuse to link Tesla's cybercab to strong Hollywood brands at a time when Tesla and Musk are on the outs with Hollywood.[1] Which of course is exactly what it was.

7. It was hardly coincidental that the specific Hollywood film which Musk actually discussed to pitch his new, fully autonomous, AI-driven cybercab was BR2049 – a film which just happens to feature a strikingly-designed, artificially intelligent, fully autonomous car throughout the story. Especially where Defendants had asked Alcon's permission to use BR2049 and been so firmly refused, this was clearly all a bad faith and intentionally malicious gambit by at least Musk and Tesla to misappropriate BR2049's storytelling power and BR2049 and Alcon's brand goodwill to advertise, market and sell Tesla's automobiles and Tesla as a company. Indeed, the rest of the opening was stilted and stiff.

8. Musk and Tesla's idea to borrow from or link to Hollywood motion pictures to advertise cars is far from new. The motivations behind it, and why the law does not allow even seemingly short or limited references to famous motion pictures in car ads without permission, have to do with the especially powerful

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[1] *See, e.g.,* Brett Berk, "Hollywood Can't Ditch Its Tesla's Fast Enough: 'They're Destroying Their Leases and Walking Away,'" *The Hollywood Reporter*, September 20, 2024, https://www.hollywoodreporter.com/lifestyle/lifestyle-news/tesla-robotaxi-warner-bros-reveal-hollywood-rejection-elon-musk-1236007945/.

nature of Hollywood movies, and how easy it can be to evoke the full influencing power of a famous movie with even just one reference.

9. Historian Yuval Noah Harari[2] teaches that, more than using tools or harnessing fire, humanity's transcending evolutionary superpower is the ability to engage in persistent exercises of shared imagination. Through the power of stories, transmitted first by oral tradition, and later by technologies like books and movies that tangibly capture expression, humans have the unique ability to build and maintain worlds and constructs that may not exist in the physical universe. Yet, these worlds and constructs nonetheless can endure as powerful intersubjective realities in the shared consciousness of millions or even billions of individual human beings.

10. Powerful stories can organize, inspire, manipulate or even control huge numbers of people, sometimes separated by vast distances of space or even time. Through the power of stories captured in printed materials, or transmitted over radio, or broadcast over television, or carried by innumerable other media, the work of talented creators has been used for thousands of years to build global empires, maintain religious institutions, and send people to the moon.

11. For at least several decades, salesmen have specifically used the storytelling power of popular Hollywood motion pictures to sell cars, including through product placement, where a car makes a branded appearance within a motion picture. Carmakers also do the inverse, borrowing story elements from Hollywood movies and incorporating them into car commercials through agreements with motion picture rights owners:

> The car commercial used to be a pretty predictable affair: a shiny new sedan driving through a downtown Los Angeles tunnel or across Big

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[2] Yuval Noah Harari, *Sapiens: A Brief History of Humankind* (HarperCollins 2015) and *Nexus: A Brief History of Information Networks From the Stone Age to AI* (HarperCollins 2015).

> Sur's Bixby Bridge, unencumbered by traffic, or a celebrity espousing the gadget-laden features of an SUV or minivan. … [¶] Many tried product placement deals, but such deals don't guarantee prime exposure for a company's product. … [¶] [I]n the latest series of campaigns, a variety of carmakers have put a twist on the typical product placement deal. They've appropriated hit films and popular film characters, making them the focus of the spots.

M. Graser, "Car Commercials Borrow From Movies to Make Their Own Stories," *Variety*, March 31, 2014 https://variety.com/2014/film/features/1201150512-1201150512/

12. Mr. Graser's *Variety* piece is from 2014, but the practice of automakers evoking famous Hollywood motion picture properties in their car ads started at least nineteen years earlier. Automakers tried to do it without permission from, or any payment to, the motion picture creators, but the judiciary quickly shut that down. *See, e.g., Metro-Goldwyn-Mayer, Inc. v. American Honda Motor Co., Inc.*, 900 F.Supp. 1287 (C.D. Cal. 1995) (granting injunction against Honda and its ad agency for evoking MGM's James Bond motion pictures in television advertisements for the then-new Honda Del Sol).

13. Responsible car makers and ad agencies now ask permission from studios first, and, if permission is granted, negotiate and pay meaningful compensation. Because Hollywood motion picture storytelling power is so strong not just in the United States but globally, responsible car makers still covet it for their advertising campaigns even though they have to pay (a lot) for it:

> "You can't underestimate how the entertainment community influences audiences around the world." says Audi of America president Scott Keogh. Connecting with entertainment keeps Audi "in the conversation," he says.

M. Graser, *supra*, *Variety*, March 31, 2014.

14. The financial magnitude of the misappropriation by Defendants here was substantial. Alcon has spent decades and hundreds of millions of dollars

building the BR2049 brand into the famous mark that it now is. The words "Blade Runner 2049," the words "Blade Runner" used in contexts that specifically evoke BR2049 distinct from the original 1982 "Blade Runner" motion picture, visual images or audiovisual presentations which evoke BR2049's main character "K," and/or which evoke iconic sequences and settings from BR2049, are all protected marks and trade dress with secondary meaning. All of these marks and trade dress connote BR2049 and its producer as the source of goods and services, or that there is an affiliation of the advertiser with BR2049 and the Picture's producer.

15. Alcon's BR2049 marks and trade dress clearly have secondary meaning in the automotive market space. Alcon has an established record of doing business with major automotive brands to affiliate themselves and their car products with Alcon and BR2049. These deals have had total dollar price tags well into the eight figures, including at least one contract for direct cash payments to Alcon in the six figures (hundreds of thousands of dollars), plus guaranteed media spends for Alcon's benefit in the eight figures (tens of millions of dollars).[3]

16. The financial stakes and complexity of BR2049 automotive brand affiliations were especially high at the time of the "We Robot" event. As of October 10, 2024, Alcon was in talks with at least one automotive brand for partnerships on Alcon's BR2049-based *Blade Runner 2099* television series currently in production, and Alcon intends to try to resume such talks. Defendants' conduct is likely to cause confusion among Alcon's potential brand partner customers, and may have already caused actual confusion with potential *Blade Runner 2099* car partners.

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[3] The referenced contract was for an aggregate of ten (10) seconds of on-screen time in the relevant context there, and not a consecutive ten seconds, either. Eleven consecutive seconds of on-screen time tying a car brand to a movie is a marketing and advertising eternity.

17. Beyond these more ordinary commercial issues, there is the problematic Musk himself. The unauthorized and unwanted association of Musk with BR2049 and Alcon is its own commercial problem. Any prudent brand considering any Tesla partnership has to take Musk's massively amplified, highly politicized, capricious and arbitrary behavior, which sometimes veers into hate speech, into account. If, as here, a company or its principals do not actually agree with Musk's extreme political and social views, then a potential brand affiliation with Tesla is even more issue-fraught. Alcon did not want to be affiliated with Musk, Tesla, or any Musk company, for all of these reasons.

18. All of this happened because WBDI contracted with Tesla, essentially loaning Tesla the studio lot for the "We Robot" event for what Plaintiff alleges was a highly lucrative deal. That made it difficult and problematic for WBDI to keep Musk bounded by well-established rules of the business. WBDI ultimately failed to do so when it could have, to Alcon's significant damage.

19. Now BR2049 and Alcon unfortunately and falsely are so affiliated, and far beyond the 11 seconds of presentation time at the cybercab "We Robot" live event. The event's worldwide livestream X feed, including Musk's BR2049-infused opening, was re-posted by Tesla, Musk, X and others thousands of times, with millions of total views. The false affiliation between BR2049 and Alcon on the one hand, and Tesla and Musk on the other hand, is irreparably entangled in the global media tapestry, all as Defendants knew would inevitably happen.

20. This was and is all highly offensive to Alcon's right to commercial and cultural self-determination. It is also directly financial damaging to Alcon. The fair market value of the brand affiliation goodwill that Defendants stole -- and the damage to Alcon's BR2049 brand and goodwill -- is at least in the six figures and possibly much higher. Defendants have also muddied the waters for Alcon's in-progress exploration of automotive brand partnerships for the upcoming BR2049-based *Blade Runner 2099* television series.

21. Alcon now seeks relief under the United States Copyright Act and the Lanham Act, for damages and to pry Musk and his co-Defendants away from Alcon's BR2049 brand and goodwill.

PERSONAL JURISDICTION OVER DEFENDANTS

22. Per Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure, this Court has personal jurisdiction over any defendant who is subject to the jurisdiction of any California court of general jurisdiction. California's long arm statute, *Cal. Code Civ. Pro.* § 410.10, allows courts in the state to exercise personal jurisdiction over parties to the full extent permissible under the United States Constitution. Personal jurisdiction over the Defendants here is thus proper if it comports with due process. It does, including for the following reasons.

Personal Jurisdiction Over Tesla

23. General Personal Jurisdiction: The Court has general or unlimited personal jurisdiction over Tesla. Tesla is currently incorporated under the laws of the State of Texas and its principal corporate office or headquarters is in Austin, Texas and has been since about December 2021. However, California was Tesla's original principal corporate office home state, from Tesla's inception in about 2003 until the December 2021 move to Texas. Tesla still maintains continuous and systematic contacts with California, including continuing to operate at least two major manufacturing plants in the state.

24. Specific Personal Jurisdiction: Additionally and/or in the alternative, the Court has specific or limited personal jurisdiction over Tesla. Alcon's claims arise out of Tesla's purposeful availment of the rights, privileges, and protections of doing business in California, and also arise out of Tesla's commission of tortious activity in California and purposeful direction of tortious conduct toward the forum state. Tesla committed the acts of infringement alleged herein, or substantial portions of them, in preparation for and during the course of the October 10, 2024 cybercab product reveal event at WBDI's Burbank, California studio lot. The

event was personally conducted by Musk who is Tesla's founder, principal and Chief Executive Officer. Tesla's acts of copyright infringement and violations of the Lanham Act all constituted torts directed toward Alcon, a forum resident, and relate to the motion picture industry, which is of compelling interest to the forum state. Exercise of personal jurisdiction over Tesla also is reasonable and fair.

Personal Jurisdiction Over Musk

25. The Court has at least specific or limited personal jurisdiction over Musk as an individual. Plaintiff's claims against him arise out of his acts of purposeful availment of the benefits and privileges of conducting activities in California, including where he personally conducted the event from the WBDI lot in Burbank, California. Plaintiff's claims also arise out of Musk's commission of tortious acts while physically present in the forum state. His acts also constituted purposeful direction of tortious conduct to the forum, all for the same specific facts and reasons as described above regarding Tesla personal jurisdiction. Exercise of personal jurisdiction over Musk as an individual also is reasonable and fair. At any given time depending on stock market fluctuations, Musk is reportedly the richest man in the world and has ample resources to defend himself in California court.

Personal Jurisdiction Over WBDI

26. The Court has general or unlimited personal jurisdiction over WBDI. WBDI is incorporated under the laws of the State of Delaware and its principal corporate office or headquarters is in New York. However, WBDI has continuous and systematic contacts with California, including owning and operating one of Hollywood's oldest major motion picture and television studios including the Warner Bros. Studios lot in Burbank, California.

27. Additionally and/or in the alternative, the Court has specific or limited personal jurisdiction over WBDI. Alcon's claims arise out of WBDI's purposeful availment of the rights, privileges, and protections of doing business in California. They also arise out of WBDI's commission of tortious activity in California and

purposeful direction of tortious conduct toward the forum state. WBDI's involvement in acts of copyright infringement and violations of the Lanham Act all constituted torts directed toward Alcon, a forum resident. They all relate to the motion picture industry, an industry in which the forum state has a compelling interest. Exercise of personal jurisdiction over WBDI also is reasonable and fair.

VENUE

28 U.S.C. § 1391(b)(2) Venue as to all Defendants

28. Venue is proper as to all Defendants pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to Alcon's claims occurred, or a substantial part of the property that is the subject of the action is situated, within this judicial district. The infringed property in question includes Alcon's copyright in BR2049 and ownership of BR2049 marks and goodwill, which property is all located within this district for venue purposes, where Alcon has its corporate headquarters in Los Angeles, California.

Additional Venue Bases

29. Venue also is proper as to WBDI and Tesla pursuant to 28 U.S.C. §§ 1400(a) and 1391(d). For venue purposes, Tesla and WBDI each reside in or may be found within this district. Tesla and WBDI each have continuous and systematic contacts with the forum state and this district specifically, including sufficient contacts with this district to establish personal jurisdiction in this district, if this district were treated as a separate state.

PARTIES

Plaintiff

30. Alcon is an independent motion picture and television studio whose products are distributed worldwide. Alcon is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 10390 Santa Monica Blvd., #250, Los Angeles, California 90025.

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31. Alcon produced BR2049 and owns the BR2049 copyright and the BR2049 marks and brand at issue in this action. Alcon has produced more than thirty other major motion pictures, including "The Blind Side" (which won the 2009 Academy Award for Best Actress), the "Dolphin Tale" series, the "Sisterhood of the Traveling Pants" series, "Book of Eli," "P.S. I Love You," "My Dog Skip," "Prisoners," and "The Garfield Movie." Alcon also produces television, including the critically acclaimed television series *The Expanse*. Alcon is currently in production on a "Blade Runner 2049" sequel or spinoff television series entitled *Blade Runner 2099*.

Defendants

32. Tesla: Tesla is a well-known developer and manufacturer of electric automobiles. Some of Tesla's automobile products are marketed as partially or fully autonomous. The idea of AI-controlled or otherwise autonomous automobiles is a Tesla brand focus.

33. Musk: Musk is Tesla's founder, largest shareholder and Chief Executive Officer. In addition to owning and operating Tesla, he also owns and operates the social media platform X (formerly Twitter) and the rocket and satellite company SpaceX, among other ventures. Musk has become an increasingly vocal, overtly political, highly polarizing figure globally, specifically including U.S. consumers, and especially in Hollywood.

34. WBDI: WBDI is one of the largest entertainment conglomerates in the world. Plaintiff is informed and believes that WBDI is the specific corporate entity within the WBDI conglomerate which actually owns the Warner Bros. Studios lot in Burbank, California, including substantially all real property and improvements thereon, including without limitation telecommunications infrastructure and systems over which the October 10, 2024 We Robot presentation was transmitted. WBDI is currently run by its Chief Executive Officer, David Zaslav, a man who is both friendly with Musk and controversial in Hollywood in his own right. Plaintiff

is informed and believes that the business relationship with Musk and Tesla and the October 10, 2024 We Robot events and related business arrangements were significant enough to the overall WBDI conglomerate, that even with respect to matters usually or sometimes left to WBDI subsidiaries and the employees of same, the event, at the very least as to the disputed matters that are the subject of this FAC, was actively monitored by, supervised by, and ultimately controlled by and directed by executives at the WBDI level, and not at a lower level of the WBDI conglomerate, such as lower level executives at Warner Bros. Pictures.

FACTS COMMON TO ALL CAUSES OF ACTION

The Infringed Work for Copyright

35. Copyright Infringed Work. Alcon is the owner and, as to all rights at issue herein, the exclusive copyright holder, of the BR2049 motion picture. In copyright terms of art, BR2049 is both a "motion picture" and the "infringed work." The Picture is registered with the United States Copyright Office under registration number PA0002056792 and has been since October 6, 2017.

36. BR2049 is itself a "derivative work" in copyright terms. It is a sequel to the 1982 Picture starring Harrison Ford as the lead character, Deckard, a professional "blade runner" -- a government sanctioned hunter and killer of replicants, or synthetic, artificially intelligent humans. In or about 2011 (with some supplemental rights acquisitions after, but all completed years before the issues arising now), Alcon acquired a broad set of rights in the 1982 Picture and underlying properties. Alcon's rights include substantially all rights to make any derivative works of the 1982 Picture in any manner or medium that appears relevant to the action.

37. Exhibits A and B Relative to the Infringed Work. The images in Exhibits A and B to this FAC are not themselves the copyright office-registered "infringed work" claimed, nor are they "photographs" or "pictorial, graphic, and sculptural works" in the copyright term of art context here. It is true that some or

all of them properly qualify as "derivative works" in their own right, if taken on a standalone basis. An action theoretically could be pursued with some or all of them as themselves the "infringed work," separated from BR2049, and subject to perfection of the appropriate derivative work registrations. But that is not this action, at least not at present. Rather, as presently alleged, in the terminology of the United States Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.*, the images in Exhibits A and B are examples of "still images" from the Picture – in particular from the core dramatic sequence that appears in BR2049 at runtime 1:36:28-1:37:59, and continuing at 1:40:48-2:01:50 ("Las Vegas Sequence"). The Exhibit A image appears in BR2049 at about 1:37:55 in the Picture's run time. The Exhibit B images are from points in the run time between 1:36:28-1:37:59, 1:40:48-1:43:35, and 1:51:30-2:01:50.[4]

38. Exhibit A is the specific still image from BR2049 in which Defendants expressed licensing interest for the "We Robot" event.

39. The Exhibit B images are examples of other actual still images from the Las Vegas Sequence referenced above, but only a tiny fraction of the still images actually in it. Motion pictures like BR2049 create the impression of motion through the persistence of vision principle. Still images are displayed rapidly in sequence, typically at the rate of 24 frames per second, which human vision perceives as an uninterrupted continuously moving image. BR2049's Las Vegas Sequence runs for about 1,414 seconds or about 33,936 frames. This makes it not practically feasible to attach captured still images of every one of the frames in the Las Vegas Sequence to the FAC, or even a quantitatively significant fraction.

40. Proper Analytic Framework For Identifying Protected Elements Where The Infringed Work Is A Motion Picture. The distinction between "motion

[4] Alcon has noted the respective run time references next to each image, directly on Exhibits A and B.

picture still images" and "photographs" is more than a mere statutory technicality. The two types of tangible expression operate differently expressively in the real world, and they are treated differently analytically under copyright law.

41. Still images recognizably from BR2049, especially if from qualitatively important scenes or sequences, are themselves protected elements of the Picture. If one or more actual still images is literally copied (by, for instance, putting it into an AI image generator), the test for whether that is unlawful appropriation does not involve any extrinsic/intrinsic analysis of the infringed work (but testing unlawful appropriation in such a circumstance, and whether there is any fair use defense, may involve the "heart of the work" test).

42. Still images recognizably from BR2049, especially if from qualitatively important scenes or sequences, are also more than just protected elements of the Picture that can be looked at alone: they are effective vehicles for quickly evoking other protected elements of the Picture. As is true with many famous motion pictures, the display of a single image from, for example, BR2049's Las Vegas Sequence, can immediately evoke protectable elements of the Picture to the audience -- like the Picture's plot, theme, dialogue, mood, setting, pace, characters, and sequence of events – even if those elements cannot be visually identified directly in the still image in question. An infringing work that looks like it is or might be a still image from BR2049, can powerfully evoke some or all of the entire Picture's plot, theme, dialogue, mood, setting, pace, characters and sequence of events in this same way -- especially if such an emulated image is openly characterized by the presenter as meant to be a still from or illustration of BR2049 or protected elements of its story (as happened here).

43. That is a kind of expressive superpower that ordinary standalone photographs do not have. Copyright explicitly recognizes that photographs and still images of motion pictures are not the same thing, in the Copyright Act's different statutory treatment of "motion picture still images" relative to the

statutorily separate category of "photographs." *See, e.g.,* 17 U.S.C. §§ 101, 106. This distinction tracks to differences in their expressive power.

44. Standalone photographs can be very powerful to evoke ideas, concepts, feelings and even whole social movements or histories, well beyond the shapes and colors within the four corners of the image – *see, e.g.,* Jeff Widener's 1989 photograph of Tiananmen Square's "Tank Man"; Alfred Eisenstadt's 1945 photograph "V-J Day Kiss in Times Square"; or the crew of Apollo 8's December 1968 "Earthrise."

45. Still images from motion pictures (or emulations of such images, especially if held out by the infringer to the audience to be such) can do such things, too, but they can also do something else. Even a single still image from a motion picture can evoke the motion picture's entire more specific set of expressive elements in the mind of the audience. Consider for example a still image of a rumpled young Dustin Hoffman bisected by the nylon-stockinged leg of a woman who's face isn't shown: if it's the right one, we all know from just that one shot that the movie is 1968's "The Graduate," and that the woman is Ann Bancroft's Mrs. Robinson. Or, of more recent vintage, a still image of a tension-wrought Zendaya in a blue dress, eyes masked by sunglasses, as she sits in a larger audience watching a contest or spectacle not shown: to anyone who has seen the movie, and perhaps even to many who only have familiarity that the movie exists, the recognition that the image is from 2024's "Challengers" is easy and immediate.

46. This phenomenon of human perception goes beyond the audience just being able to identify which movie it is from a single still image. A sufficiently recognizable motion picture still image goes further and evokes in the audience's mind some or all of the larger motion picture's story elements, like plot, themes, dialogue, mood, setting, pace, characters and sequence of events. This is because tremendous creative resources were previously expended to have the movie come

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into tangible existence, as a powerful vehicle to move (and maintain) those elements in the audience's shared imagination.

47. As Harari might put it if he were a copyright lawyer, both a standalone photograph and a single still image from a motion picture can transport the audience to a specifically shared intersubjective reality, bringing them together or otherwise influencing them (a kind of "gating," one might say). From a copyright law perspective though, the way the gating occurs is very different as between the two types of works (photographs and motion picture still images). The photograph gates to ideas, concepts, feelings, social movements or histories that may exist in a human shared imagination at some level (and probably do), but not as specifically as with a motion picture still image, and also, extremely relevant to copyright law, not preserved in a specifically copyright-protected space. In contrast, a still image from a motion picture gates to a shared imagination that is more specifically delineated (by the motion picture and its elements), and that also actually exists captured in a tangible form of expression which copyright law does protect (a "motion picture").

48. Existing copyright law as literally applied already dictates that motion picture still images are to be treated analytically differently than photographs. The two were consciously placed by Congress in different statutory categories: in section 101 of the Copyright Act, movie still images are defined as and treated as parts of "audiovisual works," rather than as "pictorial, graphic and sculptural works," where "photographs" in contrast specifically are "pictorial, graphic and sculptural works."

49. Substantiality similarity comparison case law similarly makes clear that the elements of a work to look at analytically to determine what is protected and what is not, depend on what kind of "work" the "infringed work" statutorily is. For example, under the Ninth Circuit's extrinsic/intrinsic analytical test, if the infringed work is a "motion picture," the extrinsic test must be analyzed in the

context of elements like plot, themes, dialogue, mood, setting, pace, characters, and sequence of events. In contrast, if the infringed work is a "photograph," the extrinsic test is analyzed under a different set of elements: subject matter, pose, lighting, camera angle, depth of field, and others (and the outcome for photographer plaintiffs in copyright infringement cases tends to be more Draconian).

50. Alcon respectfully submits that Congress meant what it said, and so does existing case law: motion pictures (and still images from them) and photographs are two different categories of works, and they must be treated analytically differently, including as to identification of protectable elements. Alcon also respectfully submits that makes sense, too, because of the difference in storytelling gating power that the different types of images have in the real world, as discussed above.

51. For these reasons, for instances of copying that go beyond literal copying or bodily appropriation of protected elements, identification of protected elements of BR2049 has to involve some level of consideration of the entire Picture, including its plot, themes, dialogue, mood, setting, pace, characters, and sequence of events. To facilitate that, it helps to summarize or discuss the story of work and its overall elements in the pleading, as below.

52. BR2049 Story Summary Overview. BR2049 is a sequel to the 1982 Picture, and specifically a post-apocalyptic one (to the original's mere dystopia). An overview of BR2049's elements is first helpfully informed by discussion of the 1982 Picture.

53. 1982 Picture - Story Overview. The 1982 Picture is set in a fictional 2019 Los Angeles. Artificially intelligent androids or replicants exist, but only essentially as slaves who must stay away from Earth, in off-world colonies, on penalty of death. The 1982 Picture's story opens in a Los Angeles saturated by constant advertising, shrouded in perpetual darkness and light rain, and with the

city being stalked by four rogue replicants who escaped to Earth in search of their human maker. Blade runners are tasked with finding the rogue replicants and "retiring" (killing) them.

54. In the 1982 Picture, after the blade runner initially assigned to the case is hospitalized by one of the rogue replicants, Deckard is conscripted from an ambiguous state of retirement or inactive duty by his former superiors in the Los Angeles Police Department to find the rogue replicants and retire them. To aid his search by better familiarity with current replicant technology, Deckard is sent to the corporate headquarters of the replicant maker (Tyrell) and introduced to Rachel.

55. Rachel is a new replicant model – one even more difficult to distinguish from humans than earlier models, and implanted with a full set of false human memories. The illusion is so effective that Rachel is herself unaware she is a replicant, until Deckard's testing of her empathy responses reveals the truth to her. Rachel becomes a fugitive replicant, whom Deckard's superiors add to his target list. Deckard and Rachel become lovers. The 1982 Picture is famously ambiguous about whether Deckard is or is not himself a replicant. If Deckard is a replicant, he is unaware of it; however, the possibility gnaws at him at varying levels depending on the particular cut of the film (there are several). After the original four rogue replicants are all terminated, the 1982 Picture ends with Deckard and Rachel fleeing as fugitive lovers, leaving their future undetermined.

56. The initial theatrical version of the 1982 Picture sets the mood of Rachel and Deckard's future as sunny and hopeful. However, in Ridley Scott's director's cut, Rachel and Deckard's future is left ominously ambiguous. The different versions of the 1982 Picture's ending amplified the tension and anticipation attached to the cliffhanger question it posed: what happens to Deckard and Rachel? The 1982 Picture's fanbase had to wait an unusual thirty-five real-world years for the answer.

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57. BR2049 – Story Overview. Released in October 2017, BR2049 is the first, and so far only, motion picture sequel to the 1982 Picture. BR2049 is set in a fictional 2049, thirty years after the 1982 Picture's fictional 2019. BR2049 tells the story of the main character "K" (played by Ryan Gosling). Like the 1982 Picture's Deckard, K is a professional blade runner. Unlike Deckard, K from the beginning of BR2049 clearly understands himself to be an artificially intelligent android or replicant (though he becomes unsure in the middle act of the Picture). K's human superiors put him on the track of pursuing the possible existence of a wholly or partially replicant child conceived by, and born to, a replicant mother (revealed ultimately to be Rachel). If true, the phenomenon would re-order the entire societal relationship between humans and their artificially intelligent replicant creations. K's trench coat or "duster" is the dominant feature of his wardrobe or costume. Throughout the Picture, K travels in, and is assisted by, his artificially intelligent, quasi-sentient flying car, or "spinner," which is capable of autonomous action.

58. K's love interest in BR2049 is Joi (played by Ana de Armas). Joi is K's personal version of an apparently mass-produced and mass-advertised holographic, artificially intelligent, virtual home companion. K buys an expensive emulator accessory to allow Joi to accompany him beyond her usual domestic boundaries. Together, K, Joi and the artificially intelligent spinner travel to various locations in search of the seemingly miraculous replicant child, eventually leading them to a post-apocalyptic Las Vegas.

59. By that point in the Picture, K has come to suspect that he might be the lost miracle child, now grown, and that, in searching for Rachel and Deckard, he might be searching for his own parents, a thing he previously thought impossible and only for humans. Also by that point in the Picture, unknown to K, a corporate female replicant assassin ("Luv", the antagonist in the Picture, played by Sylvia Hoeks) has been tasked by her human superiors (Tyrell, the replicant maker)

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with finding the missing child before K does. Luv has been stalking K's progress, knowing he has better information than she does about the child's location.

60. BR2049 Las Vegas Sequence. The Picture's Las Vegas Sequence shows K's arrival in, and exploration of, the orange-colored ruins of the Picture's abandoned Las Vegas, rendered uninhabitable by a dirty nuclear device many years prior to the story's timeframe. The sequence follows K as he leaves the spinner (with Joi's genie-bottle like emulator in his pocket) and walks in his duster toward and through the misty orange urban desert ruins, often viewed by the camera from behind or in silhouette. The sequence includes K's walk through the Las Vegas ruins, leading up to and foreboding the Picture's dramatic apogee: K's encounter with his predecessor Deckard (reprised by Harrison Ford) from the 1982 Picture.

61. K follows signs of life (an apiary) to a ruined casino hotel. K enters the building and finds an unfriendly Deckard, who tries to kill K. Throughout the Las Vegas Sequence to this point, the lighting is distinctly orange, so that everything appears filtered through a kind of sweetened or radioactive sepia.

62. The Las Vegas Sequence's lighting only changes when K's and Deckard's physical conflict takes them into the building's abandoned lounge or theater, where they have a one-sided fist-fight. Initially pitch black, the lounge becomes partially lit by an apparently malfunctioning holographic entertainment system, which intermittently displays stuttering holograms of 1960s- and 1970s-era entertainers, including Marilyn Monroe, chorus line dancers, Liberace, and, most prominently, Elvis Presley. As the holograms move in and out behind and among the combatants, Deckard tries vainly to knock out the inhumanly durable K with haymakers. K refuses to fight back, letting Deckard exhaust himself. As Elvis appears again singing "Can't Help Falling In Love," Deckard finally relents and invites K to have a drink instead. K accepts.

63. The distinctive orange lighting then resumes as K and Deckard retire to a private bar on an upper floor of the building -- Deckard's private nest or aerie.

Its exterior walls are floor-to-ceiling windows overlooking the Las Vegas ruins. In Deckard's aerie, both before and after K and Deckard talk about Rachel and the missing child, the screen image is K in his duster, viewed from behind or in three-quarter view, in dark silhouette, taking in the ruined Las Vegas through the picture windows, all of it bathed in orange light. (*See, e.g.,* Exhibit B, final four images.)

64. After Deckard makes emotional revelations about Rachel and the missing child, he retires to a room off-screen. K explores more of the room and its contents. He causes a jukebox to display a miniature, holographic Frank Sinatra who performs "One More for My Baby (And One More For the Road)," while trapped in a glass bottle or dome. The genie-Sinatra is distinctly gray, black and white, not orange or orange-lit like the rest of the scene. As the genie-Sinatra sings, K wistfully examines small animal wood carvings clearly made by Deckard. They match a small wood carving of a horse which K carries and which ties to an implanted memory he has. K has come to suspect the memory might actually be an impossible-yet-real memory of his own childhood. The presence of the carvings in the aerie bolster K's suspicion that he is the miracle child and that Deckard is his father and Rachel his mother. As the genie-Sinatra continues to sing, K picks up a framed photographic portrait of Rachel and looks at it longingly.

65. The Las Vegas Sequence concludes with the antagonist Luv catching up to K, assaulting Deckard's aerie with a mercenary force of flying cars, drones, and combat replicants. K wakes up from a dream or sleep, briefly to see Joi captivated by Deckard's colorful hydroponic garden, which again stands out from the other visual elements in the scene as not being orange-lit, while everything else is. Deckard returns from some other room and raises the alarm that there are incoming hostile forces. The lighting turns even more deeply orange as Luv's forces violently assault the Deckard aerie. In the assault, Deckard tries to reach his old 1982 Picture spinner where he has it parked in another room of the building. K follows him, but Luv arrives too soon. She and her forces destroy Deckard's

original 1982 Picture spinner and kidnap Deckard. Luv defeats K in hand-to-hand combat. She then smashes the Joi emulator, effectively killing Joi, while K has to watch helplessly. Right before being killed, Joi tells K that she loves him. Luv and her forces leave K lying defeated in the rubble, ending the Las Vegas Sequence.

66. BR2049 Third Act. The third act of the Picture plays out broadly as follows: A joint human/replicant resistance movement (seeking to topple the current replicants-as-slaves social regime) rescues K. They reveal to him that they know who the miracle child is, and that K is not the child (disappointingly re-establishing to K that he is a replicant and not human). The resistance asks K to help them by going after the captive Deckard and killing him, so that the information he has about the child cannot be used against the resistance. After K leaves the resistance hideaway and ponders the choice, K interacts with a giant holographic advertisement of the Joi virtual companion product. The giant Joi hologram tries to sell itself to him again – presenting K with the choice of going back to his old life status quo, in the form of literally replacing Joi. In parallel, Luv's master (Tyrell, the head of the corporate replicant maker) makes the captive Deckard a similar offer – Tyrell presents Deckard with a rebuilt Rachel, and offers her to Deckard if Deckard will voluntarily help Tyrell find the child, for the purpose of improving Tyrell's replicant technology to further entrench the human-as-god-like-master/AI-replicants-as-slaves status quo.

67. K and Deckard both reject the respective temptation offers. Tyrell directs Luv to take Deckard off-world where Tyrell has better tools for torturing Deckard into cooperation, and she commences to do so. K chases them down in his own flying spinner, shoots their spinner out of the sky, and rescues Deckard after a battle with Luv in the crashing surf where the ocean meets a giant retaining wall built against rising sea levels. K kills Luv, but is severely wounded himself, possibly fatally. Deckard rescues K from drowning, and Deckard expresses readiness to die (implicitly for the same reasons given by the resistance). Instead

of K killing Deckard per the resistance plan, K suggests that they both agree to the fiction that Deckard died in the surf, and that Deckard actually instead live secretly and meet his missing child (a daughter, a memory maker character whom K encountered earlier in his quest).

68. K takes Deckard in K's flying spinner to Deckard's daughter's location, as snow falls. Before Deckard goes inside alone to meet his daughter, he asks K for an explanation as to why K is helping Deckard. K gives no answer, but does say "your daughter makes the best memories." In the penultimate scene, K is left alone with the spinner, laying on a set of stairs looking skyward, as snow falls down on him. The scene is ambiguous about whether K survives his injury from the battle with Luv or dies. In the final scene, Deckard and his daughter see each other for the first time, and the movie ends with them reaching out to touch hands.

69. Exhibit A Image in Story Context. The Exhibit A image is from shortly after K's, Joi's and the Spinner's arrival in Las Vegas. It is an image positioned from behind K, with his close-cropped hair, garbed in his distinctive trench coat or "duster," as he stands next to his spinner, facing away from the camera to survey the devastated orange-light-bathed Las Vegas cityscape. In the Exhibit A Image, K is surveying the ruins as he prepares to set out on the walk through them that will lead him to the long-lost and mysterious Deckard – the most highly anticipated encounter in the Picture.

70. Exhibit B Image in Story Context. The Exhibit B images attached hereto and incorporated herein by reference are samples of still images from the Las Vegas Sequence. They include images from K's walk through the ruins to encounter Deckard, and from when K is in Deckard's aerie looking out the picture windows at the ruined city.

71. Non-Exhaustive List of Protected Elements of BR2049: Original protected elements of BR2049 include, but are not limited to:

a. Still images from the Picture which are iconic or sufficiently

recognizable to by themselves be identifiable as a still image from BR2049 versus any other motion picture, and especially such still images which evoke one or more of the other protected elements below.

b. The character K. Especially under storytelling theory where a "story" tracks the emotional development of a character through challenging periods of transition, K is the "story being told" in BR2049. K is also distinctively delineated, including visually. Indeed, he is at his most visually distinctive (iconically so) when depicted as a duster-clad man with close-cropped hair viewed in silhouette or near-silhouette, surveying or exploring a post-apocalyptic ruined cityscape bathed in orange light. K is also the only character in all of motion pictures to Plaintiff's knowledge who can be described as a duster-clad blade runner who surveys or explores an orange-lit post-apocalyptic ruined city.

c. Urgent Human-AI Decision Point Theme. Science fiction is always about the present in its themes and messages, and BR2049 is no exception. One of BR2049's main themes is that of society being at a critical decision point as to how humans and artificial intelligence relate to each other, and specifically that there are extremely consequential choices about that which must be made with urgency. Part of the theme is specifically that the wrong decisions will lead to apocalyptic ruin. BR2049's specific expression of the theme uses a visual relationship of signaling with orange lighting in ruins, and from K's perspective. For instance, in the Las Vegas Sequence, positive elements of a more happy and hopeful past or future (especially with an element of nostalgia) stand out from the rest of the sequence lighting in that the orange lighting is absent, either from a fragment of

the rest of a scene (genie-Sinatra, Deckard's hydroponic garden), or for a full fight scene (K's non-fight with Deckard in the malfunctioning hotel casino holo lounge). In contrast, the consequences of bad decisions or pressures of the human-AI relationship question going unresolved driving the characters and society to ruin is expressed in the orange lighting of the ruin setting, with the orange lighting becoming darker and more intense as the pressure and urgency of the human-AI relationship question intensifies. Autonomously capable artificially intelligent cars vehicles taking the characters (us) alternatively toward and away from right or wrong answers to the question is also part of the expression of the theme.

d. Mood of Anxiety, Fear and Urgency, and specifically about the Human-AI Decision Point: BR2049 uses story elements of apocalyptic event back story, combined with specific visual elements such as orange lighting, urban ruin, and the K figure in silhouette or near-silhouette surveying or exploring the ruined post-apocalyptic landscape (especially with the sense that, even in the ruin, there are still worse things that could or might happen), all to create a mood of anxiety, fear and urgency, specifically around the gravity of the Human-AI Decision Point question, and the importance of making the right decisions about it.

e. Setting: The setting of a post-apocalyptic urban ruin, specifically as a place that holds answers or important information about the Human-AI Relationship Question, bathed in orange light, and especially one that is about to be explored by a blade runner in a duster shown in silhouette or near-silhouette.

f. Combination of Elements: Even if one or more aspects of the above

protected elements list is unprotected, their use in combination, especially in the context of urgent human-AI relationship questions, is protectable, especially if openly labeled or presented as "Blade Runner"-related by the infringer.

72. Protected elements identification is discussed further herein in this FAC in the context of Defendants' acts of infringement.

Infringed Property for Lanham Act Context:

Alcon's BR2049 Marks, Brand and Trade Dress

73. Alcon's "Blade Runner 2049" Mark. Alcon owns, and has continuously owned since prior to 2024, an unregistered trademark in the words "Blade Runner 2049." The claimed mark is broad enough to include the words "Blade Runner" in contexts that refer to or include BR2049 (such as, for example, the words "Blade Runner" not followed by the number "2049," but alongside iconic images from BR2049, or other callouts to specific scenes or elements of BR2049). The words "Blade Runner 2049" are fanciful or arbitrary or suggestive and thus inherently distinctive. Even if only descriptive, they have nonetheless achieved secondary meaning through years of continuous use in commerce by Alcon, beginning no later than 2017. This includes without limitation uses in motion pictures, DVDs, comic books, video games, and other merchandise items, all such that the BLADE RUNNER 2049 mark is widely recognized by the general consuming public of the United States as a designation of source of the goods and services of Alcon (or of a single source). As detailed further below, the BLADE RUNNER 2049 mark is also recognized by both the general consuming public and by major car manufacturers and car brands as connoting affiliation with or sponsorship by Alcon when used in connection with automobiles and automobile brands (including both real automobiles, and concept automobiles).

74. Alcon's "Blade Runner 2049" Brand and Trade Dress. Still images from iconic scenes in BR2049, and audiovisual clips of iconic scenes from BR2049

have also achieved secondary meaning as trade dress widely recognized by the general consuming public of the United States as a designation of source as to the goods and services of Alcon (or a single source) in all of the categories identified above for the BLADE RUNNER 2049 mark. As detailed further below, BR2049 itself, and still images from iconic scenes from it and audiovisual clips of iconic scenes, are also specifically recognized by both the general consuming public and by major car manufacturers and car brands as having secondary meaning connoting affiliation with or sponsorship by Alcon (or a single source) when used in connection with automobiles and automobile brands (including both real automobiles, and concept automobiles).

75. Alcon's Mark or Protectable Brand Good Will in the Character "K". The character "K," including descriptions of K, and visuals images that look like or evoke the character K, and/or that are held out to be the character K, either explicitly or implicitly, are unregistered marks and/or protectable trade dress of Alcon. They have also achieved secondary meaning as trade dress widely recognized by the general consuming public of the United States as a designation of source as to the goods and services of Alcon (or a single source) in all of the categories identified above for the BLADE RUNNER 2049 mark. Including because of the close connection between K and his flying spinner in the BR2049 Picture, Alcon's K marks and trade dress are especially recognized by both the general consuming public and by major car manufacturers and car brands as having secondary meaning connoting affiliation with or sponsorship by Alcon (or a single source) when used in connection with automobiles and automobile brands (including both real automobiles, and concept automobiles). Sample visual images of K can be seen in Exhibits A and B.

76. Alcon's Protectable Lanham Act Interest in Combinations of Elements Evocative of BR2049. Alcon also has a protectable Lanham Act interest (mark, brand or trade dress) in combinations of elements which evoke or tend to evoke

BR2049 in the eyes of the ordinary consumer, in relevant markets in which Alcon does business or intends to do business, including without limitation in the sense of licensing affiliation rights or advertising rights to car companies and car brands. Pertinent here, Alcon's protectable rights in this regard extend to showing an image like Exhibit C with an accompanying voiceover discussing a "post-apocalyptic" "Blade Runner" movie, especially in an overall context of robots (replicants are sometimes recognized as a variation of robots) and artificially intelligent, semi-autonomous or wholly autonomous cars. That combination of elements evokes BR2049 under the "total effect of [the infringer's] product and package on the eye of the ordinary purchaser test" applied in cases such as *Warner Bros. Entertainment v. Global Asylum, Inc.*, 107 U.S.P.Q.2d 1910, 2012 WL 6951315 at *8 (C.D. Cal. 2012).

77. Alcon's Development of the Marks and Trade Dress. The above marks and trade dress and other identified protectable Lanham Act interests of Alcon have achieved at least secondary meaning, and in some cases famous mark status, not merely accidentally, but because of Alcon's extensive and expensive efforts. Beginning no later than 2011 and on a continuing basis ever since, Alcon expended and continues to expend vast resources, in excess of $200 million to date, from original acquisition of relevant underlying rights, to development, production, marketing, and distribution of BR2049, to ongoing brand development and active policing of infringements, to development, production and distribution of numerous derivative works, including without limitation television series, comic books, and video games. Alcon also specifically has been in the business of engaging in license agreements where car companies and brands license rights to affiliate their car brand with BR2049's marks and brands, since no later than 2016.

78. The Picture was theatrically released globally on a day-and-date basis in October 2017. It received an 89% positive audience reaction on well-known film review site Rotten Tomatoes. Among numerous other awards, BR2049 was

nominated for five Academy Awards, and it won two: Best Cinematography and Best Visual Effects. IGN gaming website named BR2049 the Best Movie of the Year for 2017, the Golden Tomato Awards named it the Best Sci-Fi/Fantasy Movie of 2017, and the 2018 Saturn Awards named it the Best Science Fiction film. BR2049 is regularly identified as one of the best science fiction movies of all time on lists of such movies generated by journalists, critics, and consumers.

79. Alcon's efforts thus have generated robust consumer goodwill and brand recognition for BR2049 and its elements, specifically including the Exhibit A Image and the Exhibit B Images in the Lanham Act context, and the other marks, trade dress and Lanham Act protectable elements identified in foregoing paragraphs. Both the Exhibit A Image and some of the Exhibit B Images, have been, and still are, prominently used by Alcon in the marketing, promotion and publicity of BR2049.

80. The Exhibit A Image was the image used as the lead visual image for numerous marketing, promotional and publicity press pieces about the Picture preceding the Picture's October 2017 initial theatrical release. It is still to this day the image that appears as the cover image to the official BR2049 marketing and promotional trailer as that trailer appears on YouTube. It is the back cover image for *The Art and Soul of Blade Runner 2049*, the coffee table book celebrating the Picture's visual design elements. It thus is one of the most iconic images from the Picture, and also one of the most commercially significant in a marketing sense. It immediately evokes BR2049 and everything the Picture stands for, without any words or other references. It is the image which Defendants specifically requested to use (and were refused by Alcon).

81. Images from BR2049's same Las Vegas Sequence also have been, and still are, used by Alcon for marketing, promotion and publicity for the Picture. As just one example, the front cover of the same *The Art and Soul of Blade Runner 2049* coffee table book about the Picture is from the Exhibit B Images set (K's

duster-garbed silhouette moving alone through misty orange-lit emptiness). Exhibit B Images and similar images from the same sequence in the Picture consistently appear at, or near, the top of search engine queries about the Picture. Exhibit B Images and those like them from the Las Vegas sequence -- of a silhouetted trench coat-garbed (or duster-garbed) man moving through a misty orange-colored ruinous urban desert landscape -- are immediately evocative of BR2049, without any other cues or references required.

82. The Picture and its brand (including specifically the words "Blade Runner" even without the year "2049," when used in contexts that evoke BR2049 distinct from the 1982 Picture, and specifically including the Exhibit A Image and Exhibit B Images) all have especially high resonance as to artificial intelligence, advanced automotive technology, and the combination of the two. K's spinner has been recognized culturally as one of the most famous vehicles in motion picture history. For example, the Petersen Automotive Museum in Los Angeles featured one of the full-scale prop models of K's spinner prominently in the museum's extended run of its "Hollywood Dream Machines: Vehicles of Science Fiction and Fantasy" special exhibit which ran from 2019 to 2020. The BR2049 K spinner was one of only three vehicles selected to be on the marketing one-sheet poster for the Petersen exhibit, along with the time-traveling DeLorean from the "Back to the Future" movies and a light cycle from "Tron: Legacy."

83. Numerous major automotive brands expressed substantial interest in a co-promotion brand partnership with Alcon on BR2049 prior to the Picture's initial theatrical release. K's spinner as it appears in BR2049 is in fact visibly branded under a major global automotive brand. The contract price for that theatrical release co-promotion was well into the eight figures (broken up into hundreds of thousands of dollars in direct cash payments to Alcon, and tens of millions of dollars in guaranteed co-promotional media spend for Alcon and the Picture's

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benefit), with the length of on-screen visible branding involved being only ten (10) non-consecutive seconds.

84. BR2049 is a commercially living property, with an ongoing active market for automotive brand partnerships in particular. For instance, as already mentioned, Alcon is currently in production on *Blade Runner 2099*, a BR2049-derived sequel or spin-off television series. At the time of the "We Robot" event, Alcon was actively in the process of engaging with automotive brands for brand partnerships on that project, and intends to resume such efforts if possible.

The October 10, 2024 Tesla Marketing Event and Alcon's Express Denial of Defendants' License Requests and Clear Objections to Any Affiliation

85. Some of what happened among the Defendants is not yet known to Plaintiff, and likely will not be known until and unless Plaintiff is allowed discovery. Based on news reports, the nature of the event, and industry custom and practice with respect to studio lot events, and partial information provided by WBDI agents or representatives, Plaintiff makes the allegations in this paragraph 85 on information and belief and subject to the need for discovery: At some point prior to October 10, 2024, Tesla and WBDI (or a WBDI subsidiary as the nominal contracting party, but with WBDI in fact actively supervising and directing decision making about the relevant facts alleged herein) entered into a contractual agreement, the details of which are unknown to Alcon, but the essence of which necessarily included that WBDI (or nominally a WBDI subsidiary being actively directed and supervised by WBDI) would lease or license or otherwise provide studio lot space, lot access, infrastructure support and other resources to Tesla for the October 10, 2024 cybercab event and preparations leading up to it. The event involved substantial WBDI resources and lot access, and regardless of who the nominal WBDI contracting entity was, the business and contractual relationship with Musk and Tesla was important enough that it was actively supervised and managed by WBDI. Pre-event preparations were significant and started weeks or

months prior, including Tesla vehicles repeatedly driving the studio lot to map it beforehand, so that about fifty fully autonomous Tesla cars could navigate the lot carrying Musk and event attendees on fully driverless rides as part of the event. The contract necessarily would have required substantial financial compensation to be paid by Tesla to WBDI (or a WBDI subsidiary, but flowing directly into WBDI's consolidated financial statements), in at least the high six figures and possibly in seven figures.

86. Based on what actually happened at the event and the communications from WBDI agents and representatives to Alcon on the day of the event, as well as the absence of any substantial brand affiliation negotiation communications to Alcon at earlier dates or at all, Alcon is informed and believes and subject to the need for discovery thereon makes the allegations in this paragraph 86: The Tesla-WBDI event contract (or another associated contract or set of understandings) included a promotional element or elements, whereby Musk and Tesla expected to be able to affiliate the cybercab with one or more motion pictures from WBDI's motion picture library, or the motion picture library of WBDI's subsidiary Warner Bros. Pictures, a division of WB Studio Enterprises Inc. ("Warner Bros. Pictures").

87. Warner Bros. Pictures was Alcon's domestic distributor for the 2017 theatrical release of BR2049 and still has some domestic distribution rights, but not without limitations and restrictions. Warner Bros. Pictures has some limited and ongoing "clip licensing" rights in the domestic market only, and not at all for a livestream television feed. Moreover, neither Warner Bros. Pictures nor any other WBDI entity owns the copyright in BR2049 or any of the Picture's marks or goodwill. No WBDI entity has or ever had any non-domestic rights or permissions for the Picture. Thus, neither Warner Bros. Pictures nor any other WBDI entity has or ever had sufficient rights to allow Tesla to exploit BR2049 or any of its elements, or any of Alcon's marks or goodwill in connection with the globally livestreamed cybercab reveal event.

88. Warner Bros. Pictures has a longstanding course of dealing with Alcon generally and on BR2049 specifically. Pursuant at least to that course of dealing, and custom and practice in the industry, Warner Bros. Pictures is required to, expected by Alcon to, and in fact actually does consult with Alcon and seek Alcon's approval prior to brand affiliation licensing of any BR2049 elements for, *inter alia*, a substantial, high-profile, and highly commercial brand affiliation, especially if the affiliation is potentially controversial or politically charged, and even if for only the domestic market.

89. Neither Warner Bros. Pictures nor any other WBDI entity or representative ever communicated with Alcon at all about any potentially contemplated BR2049 brand affiliation with the Tesla cybercab or the event. (Even the communications that occurred from WBDI's representative to Alcon on the day of the event were disingenuously in the context of a purported relatively routine "clip license" request, never as the much more significant brand affiliation really at issue.) That failure is inconsistent with the above long-standing course of dealing, and with custom and practice in the industry.

90. Based on what actually happened at the event and the communications to Alcon from WBDI representatives on the day of the event and since, as well as the absence of certain communications to Alcon at earlier dates or at all, Alcon is informed and believes and, subject to the need for discovery, makes the allegations in this paragraph 90: Musk communicated to WBDI, either before Tesla entered into a contract or contracts about the event, or at some point in the event planning process, that Musk specifically wanted to associate the cybercab and Tesla with BR2049. Musk believed (incorrectly) that in connection with the event, WBDI or Warner Bros. Pictures was going to be able to authorize Musk and Tesla's exploitation of BR2049 in connection with the event, or otherwise that WBDI or Warner Bros. Pictures could and would grant Tesla worldwide BR2049 exploitation rights to affiliate BR2049 with the cybercab during the event. Among

other BR2049 brand affiliation rights, Tesla and Musk asked WBDI (or one or more Warner Bros. Pictures employees who were being actively managed and directed by WBDI on event issues) for specific permission and rights to use the Exhibit A Image. The specific Tesla employees, contractors or agents tasked with executing on these issues included David Adametz ("Adametz") (a video production marketing executive at Tesla) and Shara Lili ("Lili"), a Manager of Video Content for Tesla (also a video production marketing executive at Tesla). One or both of Adametz and Lili were in direct contact with the WBDI executives (or Warner Bros. executives acting under the direction of WBDI about event issues) about the BR2049 brand affiliation, and one or both of Adametz and Lili were also in direct or indirect contact with Musk about it, too.

91. Based on similarly-founded information and belief, and subject to the need for discovery, Alcon further makes the allegations in this paragraph 91: At the request of one or all of the Defendants (possibly made by Adametz or Lili on behalf of Tesla and Musk), WBDI's shared services rights clearance department commenced clearance checks on the planned BR2049 brand inclusion in the October 10, 2024 cybercab event.[5] For reasons not yet fully known to Alcon, WBDI's shared services rights clearance department commenced (incorrectly) to clear the use as only involving a need for a "clip license" (typically a relatively

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[5] Shared services departments at Hollywood studios and their affiliated larger corporate conglomerates have personnel (often legal, financial, accounting, or human resources professionals) who may be ostensibly employed by, receive their paychecks from, and have titles only with, a single corporate entity in the larger conglomerate, but who in fact render services upon request or direction to a range of entities within the conglomerate. Here, Plaintiff is informed and believes and on that basis alleges that the WBDI shared services licensing department personnel involved in this matter included an individual executive who is based in Burbank, California and ostensibly an employee of Warner Bros. Pictures, but who on request or direction renders licensing and clearance services to WBDI or on its behalf.

small dollar value and innocuous type of rights license and distinct from a brand partnership or brand affiliation license), and only to the Exhibit A Image.

92. Alcon does not yet know all of what actually happened internally at WBDI, or in WBDI communications with Musk and Tesla, as to why none of them ever contacted Alcon about the larger brand affiliation proposal that was really effectively at issue. Alcon is unlikely to know without litigation discovery. However, Alcon does know at least the following three things: a) the magnitude and nature of the cybercab event, and the contemplated BR2049 use in it, meant that the issue was well beyond a mere "clip license," but rather involved a more substantive brand affiliation, requiring significant business discussions with Alcon to proceed; b) none of the Defendants or anyone acting on their behalves ever made any contact with any Alcon representative about the cybercab event prior to the actual day of the event, not even for a "clip license"; and c) none of them ever made any larger brand affiliation outreach to Alcon at all, even on the day of the event. Instead, Alcon learned about Defendants' interest in BR2049 on the day of the event, only six hours prior to the event's scheduled commencement, as follows:

93. Shortly after 12:00 p.m. PDT (noon) on October 10, 2024, the day of the event, a WBDI shared services clip licensing executive based in Burbank and engaged in the WBDI-Tesla-Musk BR2049 rights clearance process realized that WBDI's shared services licensing personnel could not ever clear the proposed BR2049 cybercab event affiliation without reaching out to Alcon and/or Alcon's international distribution partner, including because the event required global rights, not only domestic, since the event would be livestreamed globally. On information and belief, the WBDI shared services clip licensing executive communicated the problem directly or indirectly to WBDI executives and to Tesla's Adametz or Lili, informing them that either Alcon and/or Alcon's international distribution partner would have to grant permissions, or the BR2049 affiliation could not occur, since international rights were involved.

94. The WBDI shared services clip licensing executive then sent an email "heads up" to their counterpart at Alcon's international distribution partner that they might be getting an emergency rush basis BR2049 rights permission request for "a Tesla even[t] happening today on our lot (sorry)." The shared services licensing executive at Alcon's international distribution partner communicated that they would be unable to help without Alcon's direct involvement, resulting in contact finally being made with Alcon for the first time (just several hours before the event's scheduled commencement), by looping in an Alcon legal and business affairs executive into a portion of the clearance communication chain.

95. In a resulting combination of telephonic and email communications among a) Alcon's legal department and b) the above-referenced two shared services clip licensing executives at WBDI and Alcon's international distribution partner, Alcon sought further information about the proposed BR2049 rights actually being requested. Although the information given was sparse, Alcon learned enough information for Alcon's co-CEOs to consider the proposal and firmly reject it, which they did.

96. By no later than about 2:00 p.m. PDT on October 10, 2024, by a combination of emails and telephone communications, Alcon's legal and business affairs executive communicated back to the WBDI shared services clip licensing executive and the international distributor shared services clip licensing executive that: a) Alcon refused all permissions for the October 10, 2024 WBDI-Tesla event; b) Alcon was adamant that under no circumstances should there be any BR2049 affiliation, or any other Alcon affiliation, express or implied, with Tesla, X, Musk or any Musk-owned company in the course of the October 10, 2024 event, or ever (including a requirement to note Alcon's position and directions in Warner Bros. Pictures and WBDI databases); and c) the two shared services clip licensing executives were to please relay both of these a) and b) messages back to WBDI, Tesla and X, including so that there would be no mistakes in the conduct of the

event. Both of the shared services clip licensing executives reported back to Alcon that they had communicated both messages as requested. Alcon is informed and believes and thereon alleges that in fact they did. However, Alcon is further informed and believes that the issue was then raised to a very high level within the WBDI organization, essentially to the effect that Musk and Tesla were not getting something that they want, and WBDI either effectively blessed Musk and Tesla to incorporate BR2049 in the event anyway, and/or failed to take meaningful action to stop them, although such action was available.

97. Alcon is thus informed and believes and thereon alleges that by no later than about 2:00 p.m. PDT on October 10, 2024, WBDI, Tesla and X all knew and understood that Alcon had not only refused any permissions to use any BR2049 copyrighted elements in connection with the WBDI-Tesla event, but Alcon had also expressly and clearly objected to any express or implied BR2049 affiliation with the event, or with Tesla, Tesla's cybercab, Musk, or X. However, Alcon is also informed and believes and thereon alleges, subject to the need for discovery, that by the issue being raised to the high level within WBDI and WBDI either blessing Musk and Tesla to do it or not stopping them, Musk felt empowered to do it anyway.

98. Musk was personally doing the event presentation and would have to know what he was presenting and the parameters. Based on that reality and all the circumstances known to Alcon so far, Alcon is informed and believes, and on that basis and subject to the need for discovery, makes the allegations of this paragraph 98: At some point between about 2:00 p.m. PDT and the approximately 8:00 p.m. PDT actual start time of the event on October 10, 2024, Musk personally became aware of Alcon's permission denials and express objections (likely directly or indirectly through Adametz or Lili). He thus personally knew and understood that to incorporate BR2049 into the event presentation at all would be improper and an unauthorized misappropriation of BR2049 goodwill. He did it anyway.

Defendants' October 10, 2024 Intentional Copyright Infringement and Brand Misappropriation

99. The event was scheduled to begin at 7:00 p.m. PDT on October 10, 2024, but did not actually begin until about 8:00 p.m. PDT. In a brief introduction of a minute or less, a Tesla representative named "Franz" took the stage. Franz's only substantive remark was to note that the presentation was being made from the Warner Bros. lot, the home of many science fiction films that show visions of the future (a clumsily transparent excuse to attach Tesla and the cybercab to Hollywood brands). Franz then quickly segued to saying that the event would involve Tesla showing a vision of the future, and who better than Musk to do it. The livestream then shifted to a combination of aerial shots and ground cameras showing a cybercab arriving at an on-lot theater, some distance away from the presentation stage building. Musk emerged from the theater and entered the cybercab after silently waving to a small crowd.

100. The livestream tracked the Musk-bearing cybercab from various camera vantage points as it autonomously slowly rolled him to the presentation stage building at another part of the lot. Musk exited and took the event stage. He spent about another minute on welcoming remarks and explaining that there were 20 cybercabs and another 30 fully autonomous and driverless Tesla Model Ys at the event that attendees would be able to take a ride in.

101. Then to commence the actual presentation, Musk said: "So you see a lot of sci-fi movies where the future is dark and dismal, where it's not a future you want to be in." As he said this, the event's global livestream feed changed to a full screen display of a presentation slide with an image of the Earth from space at sunrise, with the words "What Kind of World Do We Want to Live In?" This first slide stayed on the full-screen livestream feed for less than two seconds.

102. Then, the livestream full screen display shifted to Musk's second slide, which the livestream displayed for about 11 seconds. The second slide is an

image that looks (on a first initial visual read) like a motion picture still photo (although it isn't) of a male figure seen from behind, with close-cropped hair, wearing a trench coat or duster, standing in almost full silhouette as he surveys the abandoned ruins of a city, all bathed in misty orange light. In the upper left corner the words "Not This" appear superimposed on part of the orange sky. Exhibit C is a screenshot of this second slide image from Musk's presentation ("Presentation Slide 2 Image").

103. The Presentation Slide 2 Image (Exhibit C) was clearly intended to read visually either as an actual still image from BR2049's iconic sequence of K exploring the ruined Las Vegas, or as a minimally stylized copy of or illustration of such a still image, or otherwise as an illustration of a scene from BR2049 and specifically its Las Vegas Sequence. It does in fact objectively read like one or all of these. From Alcon's examination, it seems likely to have been generated by: a) copying the Exhibit A Image and the Exhibit B Images (or similar images from the Picture's Las Vegas sequence), or even possibly the full BR2049 motion picture work (or qualitatively significant portions thereof) in audiovisual form, into an AI image generator, and b) then asking an AI image generation engine to make "an image from the K surveying ruined Las Vegas sequence of 'Blade Runner 2049,'" or some closely equivalent input direction. On information and belief, and subject to the need for discovery, Alcon alleges that in fact this, or something closely akin to it, is how the Presentation Slide 2 Image (Exhibit C) was generated, and for the bad faith intentional purpose of affiliating BR2049 and its goodwill with Tesla's cybercab, over Alcon's denial of permission and express objections. ("Exhibit C AI Image Generation Alternative Theory 1".)

104. Alcon pleads the following alternative facts, on information and belief and subject to the need for discovery, and subject to alternative pleading rules: The Presentation Slide 2 Image was generated by Defendants or one of them first selecting or otherwise obtaining what Defendants claim is an (unidentified)

"licensed image" as a background and then directing an AI image generator to add "Elon Musk in a duster in the foreground," or similar direction. On the same basis, Alcon further alleges that the unidentified "licensed image" was itself created in essentially the same way as described in Exhibit C AI Image Generation Alternative Theory 1 (and that thus the underlying "licensed image" was itself created by infringing Alcon's copyright in BR2049). All on the same basis, Alcon alleges that Defendants generated Exhibit C in this way for the bad faith intentional purpose of affiliating BR2049 and its goodwill with Tesla's cybercab, over Alcon's denial of permission and express objections. ("Exhibit C AI Image Generation Alternative Theory 2".)

105. On information and belief, and subject to the need for discovery, Alcon makes the allegations in this paragraph 105: The Presentation Slide 2 Image was generated in the above way or ways by an employee or agent of one or more of WBDI, Tesla (possibly by Adametz or Lili), or even possibly by Musk himself, and this was done with knowledge of the improper nature and purpose of the image generation request. All of the Defendants participated in its creation, and in its display in the presentation at the event, from a WBDI-owned building and studio lot, on WBDI-owned video screens, and otherwise using WBDI-owned technology infrastructure, operated by or in conjunction with Tesla employees, all acting in whole or in part subject to the direction and control of Musk, at least during the time of the event. Defendants all acted with the knowledge and understanding that the X livestream or other equivalent video record of the event would be retweeted, reposted, or otherwise picked up and redistributed tens of thousands or even millions of times across the United States and the world immediately and continuing for days after the event. In any event, all three of WBDI, Tesla and Musk knew and understood the unauthorized nature of the image and the improper purpose behind it, and encouraged or otherwise lent their support to the improper endeavor. In the alternative, as to any and all Defendants who did not so actively

participate, such Defendants ratified the conduct and knowingly accepted the benefits of it.

106. If there were any doubt that Defendants intended to evoke BR2049 with the Presentation Slide 2 Image, Musk erased them with his voiceover comments during the approximately 11 seconds that the infringing Presentation 2 Image was completely filling the livestream screen. He said: "You know, I love 'Blade Runner,' but I don't know if we want that future. I believe we want that duster he's wearing, but not the, uh, not the bleak apocalypse." The Presentation Slide 2 Image then disappeared and Musk segued to talking about how what we all should want is a happier looking future, and how happy and joyful his vision of cities and highways filled with driverless robot cars will be and why.

107. Although Musk said the words "Blade Runner" without the year number (without "2049"), he clearly specifically meant to evoke BR2049 rather than the original 1982 Picture, and he was motivated to do so. The two films are clearly related, but BR2049 has its own distinct brand and secondary meaning, and BR2049's specific goodwill is far more relevant to Tesla's and Musk's cybercab pitch and product.

108. Although the 1982 Picture does prominently feature flying car "spinners," the cars in the 1982 Picture are not shown to be wholly or even partially autonomous, or even shown to employ artificial intelligence themselves in any way. None of the cars in the 1982 Picture play any role as a quasi-sentient companion to the Deckard lead character in the 1982 Picture, like K's spinner does for K in BR2049. Pointedly, then, if you are a company (or own one) specifically trying to market artificially intelligent, wholly or partially autonomous self-driving cars (as Tesla and Musk are), the 1982 Picture has little or no specifically relevant context. In contrast, BR2049 has extremely relevant context and worldwide goodwill in precisely the areas of artificial intelligence, self-driving capability, and autonomous automotive capability that Tesla and Musk are trying to market.

109. Musk did successfully evoke BR2049 specifically, including to consumers and potential car maker and car brand customers of Alcon, and that is true even though Musk only said the words "Blade Runner" without adding the year "2049." For the reasons detailed in the next paragraphs below, Musk's act of displaying the Exhibit C Image -- an image of a man in near-silhouette, with close-cropped hair and wearing a duster, while he surveys an orange-light-bathed ruined and abandoned cityscape -- and displaying it for 11 seconds while Musk talks about "Blade Runner" and a specifically "apocalyptic" future – that is all specifically evocative of BR2049, and not of the 1982 Picture.

110. While both the 1982 Picture and BR2049 show dystopian urban futures, only BR2049 has a specifically apocalyptic setting. Only BR2049 has an abandoned and ruined city (Las Vegas) that has suffered an event of extreme destruction (the detonation by terrorists of a dirty nuclear device). The ruined Las Vegas is where the most dramatically charged events of the BR2049 story take place (K's encounter with the long-lost Deckard). The setting has striking color design, cinematography and other visual elements: it is distinctly bathed in "apocalyptic" misty orange light, just like the Presentation Slide 2 Image and which the 1982 Picture does not have in any comparable scene. Throughout BR2049, there also are general references and story elements about civilization having semi-recently suffered a broader, apocalyptic nuclear conflict in the mid-range past, including electromagnetic pulse activity that destroyed many electronic records, making investigation of the past difficult.

111. In contrast, the 1982 Picture is set in a dystopian urban landscape of a then-futuristic 2019 Los Angeles, but the 1982 Picture's setting is specifically not apocalyptic. In the 1982 Picture, there has not been any dirty nuclear device, or nuclear electromagnetic burst which destroyed electronic records, or other apocalyptic destruction that has hit Los Angeles or Las Vegas or any other location. If anything, the urban setting of the 1982 Picture is the opposite of

abandoned and ruined: it is overrun with too much ongoing industry and suffering from overpopulation. It is not a stark, lonely, misty, orange, dry, radiated desert ruin like BR2049's Las Vegas or the Presentation Slide 2 Image, but rather is an overcrowded neon urban prison, where the citizens are trapped in constant night plagued by perpetual rain and an ever-present bombardment of consumer advertising. In the 1982 Picture, neither the main character nor anyone else ever goes to any orange-colored post-apocalyptic ruined city or any other such location, in a duster or otherwise. Further, while in BR2049, Deckard is (or was) a "blade runner" who appears in the Picture's Las Vegas Sequence setting, he never wears a duster in BR2049 at all: Musk's voiceover reference to a blade runner wearing a duster in a post-apocalyptic setting while directing the audience to the Presentation Slide 2 Image/Exhibit C, can only be a reference to K (not Deckard).

112. Musk thus very clearly meant specifically to evoke to the audience including actual and potential purchasers and the consuming public, not the 1982 Picture, but rather BR2049 and everything that goes with it -- including artificially intelligent autonomous cars like the Tesla cybercab being pitched at the event. He successfully did.

113. Any argument that Musk and his co-Defendants only meant to talk broadly about the general idea of science fiction films and undesirable apocalyptic futures and juxtaposing them with Musk's ostensibly happier robot car future vision, and that they just used BR2049 by chance, without conscious awareness of and intent to appropriate BR2049's special secondary meaning in the context of trying to sell artificially autonomous cars, is not credible.

114. First, as detailed in foregoing paragraphs, there is a clear record that WBDI and Tesla were specifically interested in BR2049, as late as mere hours before the event, and not just any BR2049 Image, but the Exhibit A Image prominently featuring K's artificially intelligent autonomously capable spinner.

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115. Second, if Musk by his presentation was only trying to use an exemplary science fiction movie to make a rhetorical point, there were much better choices actually in the WBDI library (or the library of WBDI's subsidiary, Warner Bros.) for Musk to reference, given what his point ostensibly was. Musk's ostensible point was "science fiction film futures look bleak and not thinking enough about transportation technology risks that kind of apocalyptic future; I can help us do better with my cybercabs, but you must actively choose to do that and take action about it." If that was really the only point he was trying to make and his only aim, there are better films actually in the WBDI library (or the library of WBDI's subsidiary, Warner Bros.) to make that point and hit that mark.

116. Every single one of the five "Mad Max" movies in WBDI's (or its subsidiary Warner Bros.'s) motion picture library ("Mad Max," "The Road Warrior," "Mad Max Beyond Thunderdome," "Fury Road," and "Furiosa: A Mad Max Saga") deals far more specifically than BR2049 with that ostensible message. Every one of the Mad Max movies is set in an apocalyptic future where gas-powered, non-autonomous vehicles not only played a part in bringing about civilization's end (wars over oil), but where gasoline and gas-powered non-autonomous cars continue to be what the remaining humans fight with and about in the post-apocalyptic wasteland. Any of those "Mad Max" movies in the WBDI library (or the library of WBDI's subsidiary, Warner Bros.) thus would have made much more sense to use, if the true purpose of referencing a specific film was to make a rhetorical point.

117. The entire opening and its forced references to science fiction films generally was never really for Musk to make a rhetorical point, though. Franz's and Musk's Hollywood film rhetoric was just a contrivance for something else more economically valuable to the Defendants. The WBDI lot location, and especially the strained science fiction film references, were all clearly an intentional effort to affiliate Tesla and its cybercab with Hollywood brands, and at

a time when Musk and Tesla are on the outs with Hollywood creatives and brands. It was all about appropriating desirable Hollywood associations, and if possible, Hollywood associations with special resonance to artificial intelligence and strikingly-designed autonomous cars.

118. The "Mad Max" movies are great, and so are many other dystopian-future or apocalyptic-future movies actually in WBDI's library (or the library of WBDI's subsidiary Warner Bros. Pictures). But those movies don't have massive consumer goodwill specifically around really cool-looking (Academy Award-winning) artificially intelligent, autonomous cars. BR2049 does. It was the best and most relevant film brand for Tesla to appropriate, or one of the best.

119. The art of advertising is at least partially about choosing expressive levers that will quickly and effectively move the audience emotionally, psychologically, and/or intellectually into a state where the seller can more easily influence them to do the thing or things the seller wants them to do. For example, in the Honda Del Sol car advertisements that were the subject of *Metro-Goldwyn-Mayer, Inc. v. American Honda Motor Co., Inc.*, 900 F.Supp. 1287 (C.D. Cal. 1995), Honda evoked MGM's James Bond character and other elements of the James Bond movies, because by doing so, Honda moved the Del Sol into a well-developed world of glamor, adventure, sex and danger – James Bond's world. The message Honda was going for seems likely to have been something like, "by a Honda Del Sol and your life will be more exciting." Honda could have just said that. But, it was likely more effective and much more nuanced, and sending many more channels of messaging, to appropriate elements of James Bond – a property someone else had already spent huge resources to develop and maintain.

120. Here, especially when the entire context of the "We Robot" presentation is considered, part of Musk's and Tesla's goal was to try to convince the audience at the outset of the presentation that the decision that the presentation was going to put to them (whether or not to buy or bet on Musk's and Tesla's

artificially intelligent car products) was urgent and critical to the future of joint human/AI civilization. Musk also wanted to instill a mood not only of curiosity, but also of fear, anxiety and urgency. He also wanted strongly to suggest that there are right and wrong answers to the question, leading to good futures and bad futures (and that doing what Musk wants leads to the good futures).

121. None of those themes or moods are themselves protectable by any intellectual property law. But what Musk did was use the lever of BR2049's protectable elements as Musk's specific vehicle of expression to communicate those themes and moods, to move his audience into the emotional space Musk wanted the audience to be in for the presentation. Whether or not Musk intended that, it was the objective effect. That infringed Alcon's copyright in the Picture.

122. Defendants' conduct also violated the Lanham Act, creating actual confusion or a likelihood of it in the relevant marketplaces, about BR2049 branding, including Alcon's marketing efforts with potential auto brand partners on the *Blade Runner 2099* television series, among other marketplace confusion and brand damage. Alcon needs relief.

FIRST CLAIM FOR RELIEF

***Direct Copyright Infringement in Violation of 17 U.S.C. § 501,* et seq.**

Against Defendants WBDI, Tesla and Musk

123. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and in each paragraph of this Complaint hereafter, as if set forth herein in full.

124. To the extent any of the allegations or theories in this First Claim for Relief are inconsistent with other allegations or theories pled in this Complaint, they are pled in the alternative.

125. Plaintiff is the author and copyright owner of the motion picture "Blade Runner 2049," registered with the United States Copyright Office on

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October 6, 2017, registration number PA0002056792. That is the registered infringed work.

126. Defendants Tesla and Musk created at least two infringing works: 1) Exhibit C/Presentation Slide 2; and 2) the recorded October 10, 2024 "We Robot" presentation (a copy of which recording is in the record of the action as Exhibit 2 to the February 4, 2025 Omnibus Declaration of Chris Marchese) ("We Robot Work"). The specifically infringing portions of the We Robot Work are the approximately 11 seconds at the opening of the presentation where the Exhibit C/Presentation Slide 2 is displayed and Musk's accompanying voiceover.

127. Defendant Tesla and Musk are direct infringers, in that they violated Plaintiff's exclusive rights in BR2049 in each of the following ways, with the conduct alleged constituting both actual copying and unlawful appropriation in each instance. Defendant WBDI is a direct infringer in that the violation of Alcon's public display rights as alleged in this FAC and paragraph 127f below was conducted on, and transmitted over, WBDI-owned or WBDI-controlled property, infrastructure and systems (specifically including WBDI livestreaming infrastructure systems):

a. Violation of Reproduction Right, 17 U.S.C. § 106(1). Defendants Musk and Tesla infringed this exclusive right of Alcon by the conduct alleged in paragraph 103 in this FAC: literal copying of the entirety of BR2049 or of protectable elements of BR2049 such as still images like those in Exhibits A and B, or a partial videorecording of BR2049, to an AI image generator. These allegations are made on the same information and belief and alternative pleading theory basis as set forth in paragraph 103.

b. Violation of Reproduction Right, 17 U.S.C. § 106(1). Defendants Musk and Tesla infringed this exclusive right of Alcon by the conduct alleged in paragraph 104 in this FAC: literal copying of an

unauthorized derivative work (the allegedly "licensed image" referenced in Exhibit C AI Image Generation Alternative Theory 2), which itself was generated by literal copying of the entirety of BR2049 or of protectable elements of BR2049 such as still images like those in Exhibits A and B, or a partial videorecording of BR2049, to an AI image generator. These allegations are made on the same information and belief and alternative pleading theory basis as set forth in paragraph 104.

c. Violation of Reproduction Right, 17 U.S.C. § 106(1). Under the law of the Ninth Circuit as usually interpreted, all of the violations of Alcon's right to prepare derivative works are also necessarily violations of Alcon's reproduction rights.

d. Violation of Right to Prepare Derivative Works, 17 U.S.C. § 106(2). The Exhibit C/Presentation Slide 2 Image is an unauthorized derivative work of BR2049, which impermissibly incorporates at least the following protected elements of BR2049 (as the protected elements are detailed in paragraph 71 of this FAC): i) the character K; ii) Urgent Human-AI Decision Point Theme; iii) Mood of Anxiety, Fear and Urgency, and specifically about the Human-AI Decision Point; iv) Setting as alleged in paragraph 71e of this FAC; and v) Combination of Elements, as alleged in paragraph 71f of this FAC. See paragraphs 99-121 of this FAC. Alcon further alleges that the Exhibit C/Presentation Slide 2 Image must be treated as an unauthorized derivative work, because Musk by his commentary during the We Robot event and in the We Robot Work effectively represents to the audience that it is either itself a protected still image of BR2049, or a derivative work of BR2049, and that Defendants should therefore be estopped to contend otherwise. *Id.*

e. Violation of Right to Prepare Derivative Works, 17 U.S.C. § 106(2). The We Robot Work is an unauthorized derivative work of BR2049, which impermissibly incorporates at least the following protected elements of BR2049 (as the protected elements are detailed in paragraph 71 of this FAC): i) the character K; ii) Urgent Human-AI Decision Point Theme; iii) Mood of Anxiety, Fear and Urgency, and specifically about the Human-AI Decision Point; iv) Setting as alleged in paragraph 71e of this FAC; and v) Combination of Elements, as alleged in paragraph 71f of this FAC; and vi) incorporation of Exhibit C/Presentation Slide 2 into the work. See paragraphs 99-121 of this FAC. Alcon further alleges that the We Robot Work must be treated as an unauthorized derivative work, because Musk by his commentary during the We Robot event and in the We Robot Work effectively represents to the audience that the Exhibit C/Presentation Slide 2 Image incorporated into the We Robot Work is either itself a protected still image of BR2049, or a derivative work of BR2049, and that Defendants should therefore be estopped to contend otherwise. *Id.*

f. Violation of Right to Display Work Publicly, 17 U.S.C. § 106(5). The display of Exhibit C/Presentation Slide 2 Image at the live We Robot Event and during the livestream of the event in the United States violated Alcon's public display rights in BR2049 and its protected elements, and all three Defendants have direct infringement liability. Musk and Tesla actively conducted the event resulting in the display, paragraphs 99-121, and the display occurred over WBDI-owned or -controlled systems, *see* paragraph 105.

128. Alcon alleges and contends that where substantial similarity analysis is required, Defendants' acts of infringement above as to the character K are subject to the "story being told," distinct delineation, and/or bodily appropriation tests

applicable to characters, and that the character K satisfies them. Alcon further alleges and contends that the element of Setting as described in paragraph 71e is an original location that is also subject to, or should be subject to, these same tests, and that the Setting as described in paragraph 71e satisfies them. *See, e.g.*, K. Wright, Note, "Blueprints of Character: Applying the Distinct Delineation Test and Character Copyright Protection to Original Literary Places," 43 AIPLA Q.J. 221 (Winter 2015).

129. The foregoing acts of Defendants WBDI, Tesla and Musk infringed upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce, create derivative works, display, distribute and publicly perform BR2049 and its protectible elements. Such actions and conduct constitute copyright infringement in violation of 17 U.S.C. § 501, *et seq.*

130. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and registered the exclusive rights and privileges in and to the copyrights of the above-referenced work in accordance with 17 U.S.C. § 408.

131. Plaintiff suffered damages as a result of Defendants' unauthorized use of BR2049 and its protectible elements.

132. Plaintiff is entitled to temporary, preliminary and/or permanent injunctive relief, pursuant to 17 U.S.C. § 502(a).

133. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to impoundment of all materials used to achieve the infringement, and records documenting Defendants' exploitation of their infringements, including without limitation all materials used by Defendants or any image generation tool employed by them to generate the Presentation Slide 2 Image.

134. Plaintiff is entitled to recover and seeks its actual damages and any additional profits of Defendants WBDI, Tesla and Musk attributable to the infringements, under 17 U.S.C. § 504(b).

///

135. Plaintiff also is entitled to elect to recover and seek statutory damages under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than $750 or more than $30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and believes and on that basis alleges that Defendants' acts of copyright infringement, as alleged above, were willful, intentional, and malicious. Such acts subject Defendants to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to $150,000 per infringement.

136. Within the time permitted by law, Plaintiff will make its election between actual damages and profit disgorgement, or statutory damages.

137. Plaintiff also is entitled to a discretionary award of attorney fees under 17 U.S.C. § 505.

138. Plaintiff seeks or reserves the right to seek any or all of the above forms of relief, in addition to prejudgment interest to the extent legally available and Plaintiff's costs.

SECOND CLAIM FOR RELIEF

***Vicarious Copyright Infringement in Violation of 17 U.S.C. § 501,* et seq.**

Against Defendants WBDI, Tesla and Musk

139. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and each paragraph of this Complaint hereafter, as if set forth herein in full.

140. To the extent any of the allegations or theories in this Second Claim for Relief are inconsistent with other allegations or theories pled in this Complaint, they are pled in the alternative.

141. If Defendants WBDI, Tesla and Musk are not each liable as direct infringers of BR2049, they are secondarily liable for the infringements directly committed by individual agents, contractors, or other infringers presently unknown (the "Direct Infringers") under the vicarious infringement doctrine.

///

142. Defendants WBDI, Tesla and Musk had the right and ability to supervise the infringing activity that all the Direct Infringers committed. The facts and circumstances of the event make clear that at the very least Tesla and Musk could have refrained from creating Exhibit C/Presentation Slide 2 Image or including it in the We Robot Presentation or told their agents, employees or contractors not to include it. Defendant WBDI was using its shared services licensing department to perform clearance work for the presentation at least related to film references. Plaintiff is thus informed and believes and on that basis, and subject to the need for discovery, alleges that WBDI had the right and ability to tell the Direct Infringers that their infringing conduct was not acceptable and could not be part of the presentation. Plaintiff is specifically informed and believes and thereon alleges that the issue of whether or not Musk and Tesla should be allowed to use any aspect of the BR2049 property in the event and whether WBDI should do anything to stop them from doing so was raised internally at WBDI to a very high level WBDI executive, such that WBDI was actively aware of the issue, and did nothing to stop it. To the extent that the Direct Infringers were individual agents, employees or contractors of WBDI, or of one or more subsidiaries of WBDI over which WBDI exercised actual or practical control, then WBDI plainly had the right and ability to supervise the Direct Infringers' infringing conduct.

143. Defendants obtained some direct financial benefit from the infringement of Plaintiff's rights in BR2049 by the Direct Infringers.

144. With respect to Musk and Tesla, the Direct Infringements allowed the inclusion of the 11 seconds of infringing material in the We Robot presentation and We Robot Work, and featured sufficiently prominently in the We Robot presentation, and still does in the We Robot Work, that it constitutes part of the draw intentionally being used by Musk and Tesla to sell cars and the Company. In that regard, Plaintiff incorporates the allegations of the FAC's paragraphs 8-13, 44-47, 93-98 and 104-121.

145. Plaintiff further alleges that Musk similarly believed that the BR2049 reference and affiliation would increase consumer interest in Tesla cybercabs, and that Tesla would sell more of them or experience more pre-orders for them. Musk is not only the largest shareholder in Tesla, but his compensation as CEO is directly tied to the Tesla stock price, as a substantial portion of Musk's compensation is grants of equity in Tesla. Musk thus believed he would directly benefit financially from the infringement.

146. As for WBDI, Plaintiff is informed and believes and on that basis alleges, subject to the need for discovery, whether it was a formal brand affiliation right built into the WBDI-Tesla event agreement contract(s) or not, Musk and Tesla's belief that they would be able to use one or more Hollywood motion picture properties in the library of WBDI's subsidiary Warner Bros., at no extra meaningful charge, was part of the draw for Musk and Tesla to agree to make the payments that Tesla contracted to make to WBDI for the event. Further, Plaintiff is informed and believes and on that basis, and subject to the need for discovery, alleges that Musk and Tesla (inaccurately) believed that one of the motion pictures they could use in this way and that WBDI could cause to be provided in this way, and indeed the one which they saw as the most desirable, was BR2049. Based on past actual brand affiliation contracts for automotive partners on BR2049, Tesla likely would have had to make significant expenditures – at least in the mid-six-figures (at least $500,000) and possibly into the eight figures ($10 million or more) to obtain a BR2049 brand affiliation with Tesla and the cybercab at market value, if Alcon had even been willing to do it at all. Thus, that Musk and Tesla believed that they were going to get it essentially for free, as a throw-in to the event agreement, was a draw to Musk and Tesla for the money that they agreed to pay to WBDI for the event.

147. With respect to WBDI, further and similarly, Plaintiff is informed and believes and on that basis, and subject to the need for discovery, alleges that the event contract between WBDI and Tesla, included either a formal or informal co-

promotional or brand affiliation element, and that prior to October 10, 2024, Tesla and Musk believed and relied on (inaccurately) that WBDI could deliver a brand affiliation with BR2049. Plaintiff is informed and believes and on that basis, and subject to the need for discovery, alleges that when Tesla and Musk learned that was not true or not the same situation as they had believed, WBDI had a financial incentive to avoid any claims of breach of contract or adjustment of the contract price, and one way to do that was essentially to allow the fudging (questionable manipulation) of the situation by either suggesting, encouraging, or knowingly allowing Tesla and Musk's generation of and use of and conduct of the Exhibit C/Presentation Slide 2 Image and 11 infringing seconds of the We Robot presentation.

148. Accordingly, all Defendants had an incentive to permit infringement by the Direct Infringers.

149. The foregoing acts of Defendants WBDI, Tesla and Musk infringed upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce, create derivative works, and publicly display BR2049 and its protectible elements. Such actions and conduct constitute copyright infringement in violation of 17 U.S.C. § 501, *et seq.*

150. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and registered the exclusive rights and privileges in and to the copyrights of the above-referenced work in accordance with 17 U.S.C. § 408.

151. Plaintiff suffered damages as a result of Defendants' unauthorized use of BR2049 and its protectible elements.

152. Plaintiff is entitled to temporary, preliminary and/or permanent injunctive relief, pursuant to 17 U.S.C. § 502(a).

153. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to impoundment of all materials used to achieve and records documenting Defendants' exploitation of, their infringements, including without limitation all materials used

by Defendants or any image generation tool employed by them to generate the Presentation Slide 2 Image.

154. Plaintiff is entitled to recover and seeks its actual damages and any additional profits of Defendants WBDI, Tesla and Musk attributable to the infringements, under 17 U.S.C. § 504(b).

155. Plaintiff also is entitled to elect to recover and seeks statutory damages under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than $750 or more than $30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and believes and on that basis alleges that Defendants' acts of copyright infringement, as alleged above, were willful, intentional, and malicious. Such acts subject Defendants to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to $150,000 per infringement.

156. Within the time permitted by law, plaintiff will make its election between actual damages and profit disgorgement, or statutory damages.

157. Plaintiff also is entitled to a discretionary award of attorney fees under 17 U.S.C. § 505.

158. Plaintiff seeks or reserves the right to seek any or all of the above forms of relief, in addition to prejudgment interest to the extent legally available and Plaintiff's costs.

THIRD CLAIM FOR RELIEF

***Contributory Copyright Infringement in Violation of 17 U.S.C. § 501,* et seq.**

Against Defendants WBDI, Tesla and Musk

159. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and each paragraph of this Complaint hereafter, as if set forth herein in full.

160. To the extent any of the allegations or theories in this Third Claim for Relief are inconsistent with other allegations or theories pled in this Complaint, they are pled in the alternative.

161. If Defendants WBDI, Tesla and Musk are not individually liable as direct infringers of BR2049, they are secondarily liable for the infringements committed by the Direct Infringers under the contributory infringement doctrine.

162. Defendants WBDI, Tesla and Musk had, or should have had, knowledge of the infringements of the Direct Infringers. Tesla and Musk plainly intentionally included the Exhibit C/Presentation Slide 2 Image in the October 10, 2024 Tesla presentation, and they could plainly see that it was not an actual still image from BR2049, but rather a stylized copy likely to found infringing. They also all knew that Alcon had refused permission to use BR2049 or any of its elements in the presentation or in connection with it. Defendant WBDI was using its shared services licensing department to perform clearance work for the presentation at least related to motion picture references. Plaintiff is informed and believes and on that basis and subject to the need for discovery alleges that if WBDI or its personnel were not Direct Infringers, WBDI's shared services licensing clearance department was at least being shown image options, including viewing the proposed Exhibit C/Presentation Slide 2 Image in advance of the event, and thus knew about the infringement.

163. Defendants WBDI, Tesla and Musk either materially contributed to or induced the infringements. Tesla and Musk materially contributed to the direct infringements by including the Exhibit C/Presentation Slide 2 in Musk's presentation. Plaintiff is informed and believes and on that basis and subject to the need for discovery alleges that Musk was determined specifically to reference BR2049 and an image from it in the presentation, and his determination induced the direct infringements by the Direct Infringers of creating the infringing Presentation Slide 2 Image. Defendant WBDI materially contributed to the direct infringements at the very least in that the event display, distribution and public performance aspects of the infringement occurred at WBDI's Burbank, California studio lot, and with the use and support of WBDI's facilities and technology.

Plaintiff is informed and believes and on that basis, and subject to the need for discovery, alleges that WBDI induced the infringement by convincing or encouraging the Direct Infringers and Tesla and Musk that Alcon's denial of any BR2049 permissions could be circumvented by generation and use of an AI-generated copy of iconic BR2049 imagery, as Alcon alleges the Presentation Slide 2 Image to be.

164. The foregoing acts of Defendants WBDI, Tesla and Musk infringed upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce, create derivative works, display, distribute and publicly perform BR2049 and its protectible elements. Such actions and conduct constitute copyright infringement in violation of 17 U.S.C. § 501, *et seq.*

165. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and registered the exclusive rights and privileges in and to the copyrights of the above-referenced work in accordance with 17 U.S.C. § 408.

166. Plaintiff suffered damages as a result of Defendants' unauthorized use of BR2049 and its protectible elements.

167. Plaintiff is entitled to temporary, preliminary and/or permanent injunctive relief, pursuant to 17 U.S.C. § 502(a).

168. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to impoundment of all materials used to achieve and records documenting Defendants' exploitation of, their infringements, including without limitation all materials used by Defendants or any image generation tool employed by them to generate the Presentation Slide 2 Image.

169. Plaintiff is entitled to recover and seeks its actual damages and any additional profits of Defendants WBDI, Tesla and Musk attributable to the infringements, under 17 U.S.C. § 504(b).

170. Plaintiff also is entitled to elect to recover and seeks statutory damages under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than $750 or more than

$30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and believes and on that basis alleges that Defendants' acts of copyright infringement, as alleged above, were willful, intentional, and malicious. Such acts subject Defendants to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to $150,000 per infringement.

171. Within the time permitted by law, Plaintiff will make its election between actual damages and profit disgorgement, or statutory damages.

172. Plaintiff also is entitled to a discretionary award of attorney fees under 17 U.S.C. § 505.

173. Plaintiff seeks or reserves the right to seek any or all of the above forms of relief, in addition to prejudgment interest to the event legally available and Plaintiff's costs.

FOURTH CLAIM FOR RELIEF

False Affiliation and/or False Endorsement in Violation of 15 U.S.C. § 1125(a)(1)(A) against All Defendants

174. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and each paragraph of this Complaint hereafter, as if set forth herein in full.

175. To the extent any of the allegations or theories in this Fourth Claim for Relief are inconsistent with other allegations or theories pled in this Complaint, they are pled in the alternative.

176. Alcon owns the marks, trade dress and other Lanham Act-protectable interests identified in paragraphs 73-84 (together, "Alcon's Marks"), and has owned since prior to 2024.

177. Defendants Tesla and Musk have engaged in false representations which are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Tesla and Musk with Alcon or as to the sponsorship or approval of Tesla's or Musk's goods, services, or commercial

activities by Alcon.

178. Plaintiff alleges that Tesla and Musk engaged in the following specific conduct that together constituted false statements that constituted false representations of the type described in the foregoing paragraph 177: the conduct and statements made by Tesla and Musk at the October 10, 2024 Tesla-WBDI event as described in paragraphs 85-122 above, and as further distributed and made available to consumers thereafter by the wide dissemination to and ongoing presence and availability of, the We Robot Work to consumers.

179. As alleged in detail in paragraphs 85-122 above, in the about eleven seconds of We Robot presentation on October 10, 2024 which included the Exhibit C/Presentation Slide 2 Image and Musk's accompanying voiceover, Musk and Tesla by their conduct used or evoked all of the following protectable Lanham Act interest of Alcon: a) Alcon's BLADE RUNNER 2049 mark as it is described in paragraph 73; b) Alcon's mark or protectable goodwill in the character K; c) Alcon's protectable trade dress in iconic or recognizable still images from BR2049 such as Exhibit A and the Exhibit B images, specifically generating the Exhibit C/Presentation Slide 2 Image and displaying it with accompanying voiceover by Musk such that it appeared to be either an actual still image from BR2049's Las Vegas Sequence, or a lightly-stylized illustration of K about to enter the irradiated Las Vegas at or near the beginning of the sequence; and d) a protectable combination as alleged in paragraph 76.

180. Pointedly, Alcon's Lanham Act claim is not that Tesla and Musk were using Alcon's marks to market or sell BR2049 itself (reverse passing off), or even that Tesla and Musk violated the Lanham Act just by using a faked still image or faked BR2049 illustration which they held out as an actual BR2049 still image or licensed illustration (passing off, which they did do, also). Rather, the Lanham Act claim is centered around that Musk and Tesla used Alcon's marks and trade dress to advertise cars and a car company. The We Robot presentation was for all intents

and purposes a long livestreamed advertisement for Tesla and its products, and it reached a substantial set of the general consuming public in the United States, and of Alcon's potential auto brand partners on BR2049. Alcon is in fact in that business of licensing the BR2049 marks and trade dress to car makers for advertising affiliation.

181. Tesla's and Musk's unauthorized use of, and references, to Alcon's BR2049 marks and secondary meaning elements had and have the effect of falsely representing that Tesla's and Musk's goods and services are licensed, sponsored, endorsed, or otherwise authorized by Alcon, and/or is at the very least misleading as to these points, and in a business market (auto brand marketing partnerships on BR2049) in which Alcon is actually an established player.

182. Tesla's and Musk's conduct is likely to cause confusion or mistake and to deceive consumers and/or Alcon's relevant actual and potential business partners as to the endorsement, sponsorship, affiliation, connection, or association of Alcon with Tesla's and Musk's services and products. In this context, Alcon's relevant business partners include automotive brands with potential interest in brand affiliations with BR2049, including without limitation with the BR2049-based *Blade Runner 2099* television series currently in production by Alcon. They also include business partners in the Hollywood talent pool market where Alcon is active on an everyday basis, and which Hollywood talent pool market generally is less likely to deal with Alcon, or parts of the market may be, if they believe or are confused as to whether, Alcon has an affiliation with Tesla or Musk.

183. Tesla and Musk engaged in the above conduct intentionally and in bad faith, conspiring to and then executing a fraudulent scheme falsely to create a purported justification or excuse to feature Alcon's BR2049 prominently at the outset of Tesla's and Musk's cybercab product reveal presentation, and without paying Alcon any fee for doing so, for the purpose of using BR2049's goodwill to increase the interest level and cache of the new Tesla product pitch and product.

184. All of the foregoing false endorsement uses of Alcon's BR2049 marks and goodwill were commercial speech, and not subject to any defense predicated on the nature of the use being a non-commercial use or non-commercial speech. Specifically, some or all of Tesla's and Musk's speech was either (a) core commercial speech in that it proposes a commercial transaction, or in the alternative, (b) was nonetheless commercial for purposes of false endorsement law and Plaintiff's claims herein, in that the communications were advertisements, made reference to a specific product, and the speaker had an economic motivation for the communication, all within the meaning of *Bolger v. Youngs Drugs Products Corp.*, 463 U.S. 60 (1983) and its progeny.

185. As a direct and proximate result of Tesla's and Musk's wrongful actions, Alcon has suffered damages in an amount to be proven at trial, but in excess of the jurisdictional minimum.

186. Alcon further alleges that Tesla's and Musk's unauthorized use of Alcon's BR2049 marks and secondary meaning elements will continue unless and until Tesla and Musk are enjoined. Alcon has no adequate remedy at law to prevent Tesla and Musk from continuing to wrongfully violate Alcon's rights, and Alcon will suffer irreparable harm unless Defendants are enjoined from continuing their wrongful conduct.

187. Plaintiff is informed and believes and on that basis alleges that if afforded a reasonable opportunity for discovery, discovery will show that Defendant WBDI aided and abetted Tesla's and Musk's Lanham Act violations described herein, including in that WBDI aided, encouraged and/or lent meaningful support to Tesla and Musk before, during or after Tesla's and Musk's violations, and with knowledge by WBDI that the acts by them were improper. In that regard, Alcon specifically refers to the allegations in paragraphs 34, 85-98 and 105.

188. Defendants all had actual knowledge of the wrongfulness of their conduct and the high probability that such acts would cause injury and/or damage

to Plaintiff. Despite their knowledge, Defendants intentionally pursued their course of conduct, resulting in injury or damage to Plaintiff.

Prayer for Relief

WHEREFORE, Plaintiff prays judgment be entered in its favor and against Defendants, and each of them, as follows:

1. On the First Claim for Relief for Copyright Infringement:
   a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying, distributing, selling, or offering to sell BR2049 or protectible elements thereof in connection with Tesla or Musk, or making derivative works thereof for such purposes.
   b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Exhibit C/Presentation Slide 2 Image and We Robot Work and underlying materials used in violation of Plaintiff's copyrights—including digital copies or any other means by which they could be used again by the Defendants without Plaintiff's authorization—as well as all related records and documents.
   c. For actual damages and all profits that Defendants derived from the unauthorized use of BR2049 or, where applicable and at Plaintiff's election, statutory damages.
   d. For an award of attorneys' fees.
   e. For an award of pre-judgment interest as allowed by law.
   f. For costs of suit.
   g. For such further relief as the Court deems just and proper.
2. On the Second Claim for Relief for Vicarious Copyright Infringement:
   a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying, distributing, selling, or offering to sell BR2049 or protectible elements

thereof in connection with Tesla or Musk, or making derivative works thereof for such purposes.

b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Exhibit C/Presentation Slide 2 Image, We Robot Work, and underlying materials used in violation of Plaintiff's copyrights—including digital copies or any other means by which they could be used again by the Defendants without Plaintiff's authorization—as well as all related records and documents.

c. For actual damages and all profits that Defendants derived from the unauthorized use of BR2049 or, where applicable and at Plaintiff's election, statutory damages.

d. For an award of attorneys' fees.

e. For an award of pre-judgment interest as allowed by law.

f. For costs of suit.

g. For such further relief as the Court deems just and proper.

3. On the Third Claim for Relief for Contributory Copyright Infringement:

a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying, distributing, selling, or offering to sell BR2049 or protectible elements thereof in connection with Tesla or Musk, or making derivative works thereof for such purposes.

b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Exhibit C/Presentation Slide 2 Image, We Robot Work, and underlying materials used in violation of Plaintiff's copyrights—including digital copies or any other means by which they could be used again by the Defendants without Plaintiff's authorization—as well as all related records and documents.

c. For actual damages and all profits that Defendants derived from the

unauthorized use of BR2049 or, where applicable and at Plaintiff's election, statutory damages.

d. For an award of attorneys' fees.

e. For an award of pre-judgment interest as allowed by law.

f. For costs of suit.

g. For such further relief as the Court deems just and proper.

4. On the Fourth Claim for Relief (False Endorsement in Violation of 15 U.S.C. § 1125(a)(1)(A))

1. For injunctive relief, including without limitation for an order mandating that Defendants cease any further promotional or advertising use of BR2049; that Defendants place a corrective notice or disclaimer on the We Robot Work and all copies thereof putting viewers on notice that the portions of the event referencing BR2049 false and misleading and that BR2049 and Alcon have no relationship or affiliation with Tesla, Musk or the cybercab product; and an order mandating that Defendants cease to distribute any further copies of the We Robot Work or event livestream that contains the BR2049 references and Presentation Slide 2.
2. For compensatory damages;
3. Defendants' profits;
4. Attorney fees;
5. Costs of suit;
6. Prejudgment Interest; and
7. Such other and further relief as the Court may deem just and proper.

DATED: February 13, 2025

ANDERSON YEH PC
Edward M. Anderson
Regina Yeh

By _____

Attorneys for Plaintiff
ALCON ENTERTAINMENT, LLC

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, on its claims against Defendants Tesla, Inc. ("Tesla"), Elon Musk ("Musk"), and Warner Bros. Discovery, Inc. ("WBDI"), Plaintiff Alcon Entertainment, LLC hereby demands a trial by jury of all matters triable to a jury.

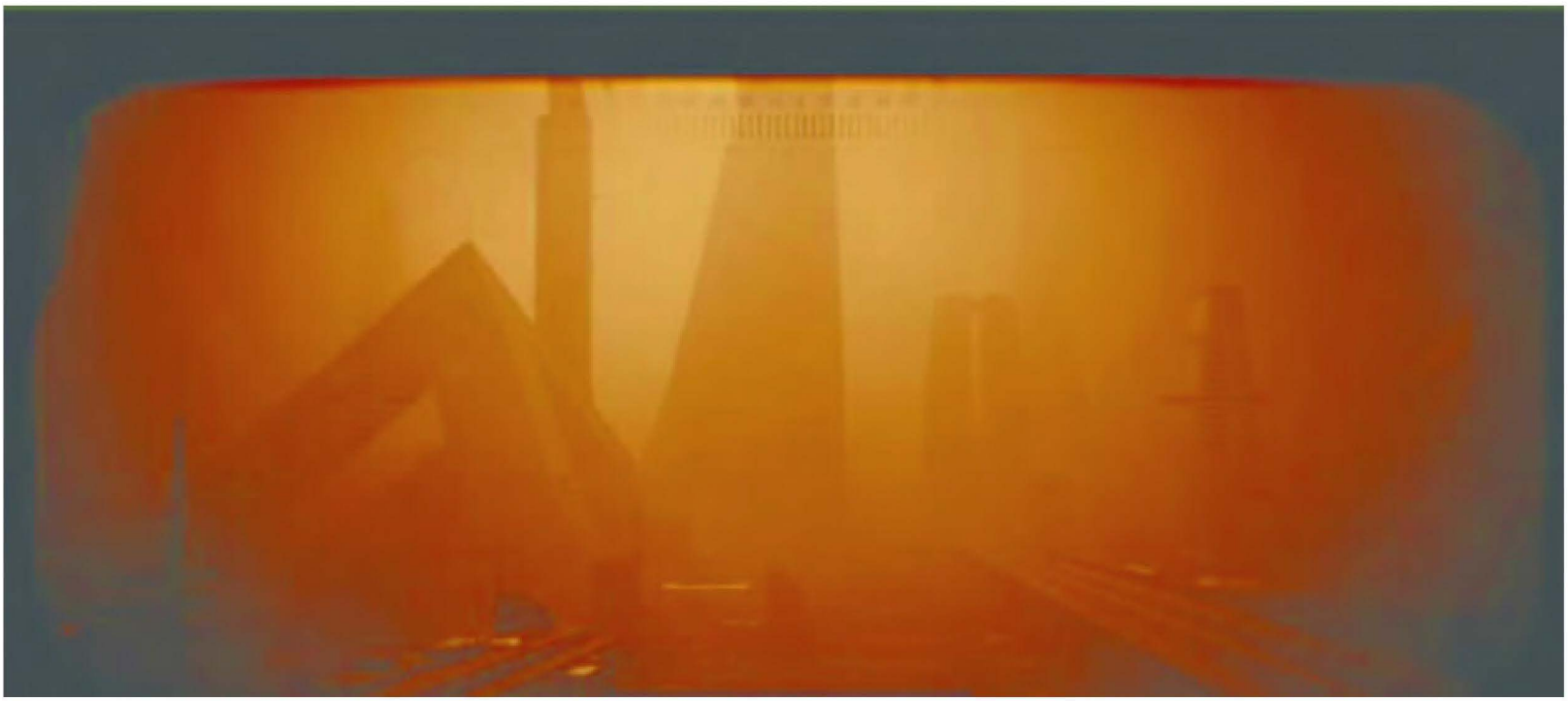
DATED: February 13, 2025

ANDERSON YEH PC
Edward M. Anderson
Regina Yeh
By _____
Attorneys for Plaintiff
ALCON ENTERTAINMENT, LLC

EXHIBIT A

BR2049 at c. 1:37:55

EXHIBIT B



BR2049 at c. 1:36:53

BR2049 at c. 1:37:28

BR2049 at c. 1:40:48

BR2049 at c. 1:41:08

BR2049 at c. 1:41:12

BR2049 at c. 1:41:42

BR2049 at c. 1:42:37

BR2049 at c. 1:42:49

BR2049 at c. 1:51:39

BR2049 at c. 1:57:21

BR2049 at c. 1:58:20

BR2049 at c. 1:58:20

EXHIBIT C

NOT THIS
TESLA LIVE

Exhibit 34

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 24-9033-GW-RAOx	Date	April 4, 2025
Title	*Alcon Entertainment, LLC v. Tesla, Inc., et al.,*		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	None Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None Present	None Present

PROCEEDINGS: **IN CHAMBERS - TENTATIVE RULINGS ON DEFENDANTS TESLA, INC. AND ELON MUSK'S MOTION TO DISMISS FIRST AMENDED COMPLAINT [48]; and DEFENDANT WARNER BROS. DISCOVERY, INC.'S MOTION TO DISMISS FIRST AMENDED COMPLAINT [49]**

Attached hereto is the Court's Tentative Rulings on Defendants' Motions [48, 49], set for hearing on April 7, 2025 at 8:30 a.m.

Initials of Preparer JG

Alcon Entm't, LLC v. Tesla, Inc., et al., Case No. 2:24-cv-9033-GW-(RAOx)
Tentative rulings on: 1) Defendants Tesla, Inc. and Elon Musk's Motion to Dismiss First Amended Complaint, and 2) Defendant Warner Bros. Discovery, Inc.'s Motion to Dismiss First Amended Complaint

I. Background

Alcon Entertainment, LLC ("Plaintiff") has sued Tesla, Inc. ("Tesla"), Elon Musk ("Musk"), and Warner Bros. Discovery, Inc. ("Warner" and, together with Tesla and Musk, "Defendants") due to events occurring in connection with promotion efforts involving Tesla's planned "cybercab" product at, and using, Warner's facility/ies. In partial response to earlier-filed motions to dismiss, Plaintiff filed a First Amended Complaint ("FAC") on February 13, 2025. *See* Docket No. 37. The FAC contains four claims for relief: 1) direct copyright infringement [17 U.S.C. § 501]; 2) vicarious copyright infringement [17 U.S.C. § 501]; 3) contributory copyright infringement [17 U.S.C. § 501]; and 4) false affiliation and/or false endorsement [15 U.S.C. § 1125(a)(1)(A)]. Defendants now move, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss the FAC with prejudice, with one motion filed on behalf of Tesla and Musk, and another filed on Warner's behalf.

Plaintiff is an independent motion picture and television studio that produced the motion picture "Blade Runner 2049" ("BR2049"), and that "owns the BR2049 [registered] copyright and the BR2049 marks and brand at issue in this action." *See* FAC ¶¶ 3, 30-31, 125; *see also id.* ¶ 35. Among other things, BR2049 "feature[s] a strikingly-designed, artificially intelligent, fully autonomous car throughout the story." *Id.* ¶ 7.[1]

[1] Plaintiff has provided a "non-exhaustive" list of what it believes are the copyright-protected elements of BR2049. They include: a) presumably *any* "[s]till images from [BR2049] which are iconic or sufficiently recognizable to by themselves be identifiable as a still image from BR2049 versus any other motion picture, and especially such still images which evoke one or more of the other protected elements" Plaintiff has identified; the character "K," who Plaintiff asserts is the "story being told" in the film, and who is "visually distinctive," particularly "as a duster-clad man with close-cropped hair viewed in silhouette or near-silhouette, surveying or exploring a post-apocalyptic ruined cityscape bathed in orange light"; a "theme" of "Urgent Human-AI Decision Point," specifically-expressed by use of "a visual relationship of signaling with orange lighting in ruins, and from K's perspective," with "[a]utonomously capable artificially intelligent cars vehicles [*sic*] taking the characters (us) alternatively toward and away from right or wrong answers to the question" also being "part of the expression of the theme"; a "mood" of "Anxiety, Fear and Urgency, and specifically about the Human-AI Decision Point"; a "setting" – which Plaintiff asserts is, or should be, also subject to a "story being told" test – of "a post-apocalyptic urban ruin, specifically as a place that holds answers or important information about the Human-AI Relationship Question, bathed in orange light, and especially one that is about to be explored by a blade runner in a

According to Plaintiff, Musk – Tesla's "founder, largest shareholder and Chief Executive Officer," *id.* ¶ 33 – and Tesla "wanted to leverage BR2049 to advertise cars, specifically including BR2049's main character and the [film's] iconic 'Las Vegas Sequence.'" *Id.* ¶ 4. This particularly concerned an October 10, 2024 presentation at what was described as a "We Robot" event held (as part of a "highly lucrative deal") at Warner's Burbank, California studio lot. *See id.* ¶¶ 2-3, 5, 18.

Plaintiff alleges, on information and belief, that Tesla and Warner (or a Warner subsidiary "as the nominal contracting party, but with [Warner] in fact actively supervising and directing decision making about the relevant facts") entered into a contract "the essence of which" included Warner (or nominally a Warner subsidiary) leasing or licensing or otherwise providing studio lot space, lot access, infrastructure support and other resources to Tesla for the October 10, 2024 event. *See id.* ¶ 85. Warner "actively supervised and managed" the contractual relationship with Tesla. *See id.* The contract "necessarily would have required substantial financial compensation to be paid by Tesla to" Warner (or a Warner subsidiary, flowing directly into Warner's consolidated financial statements). *See id.*

Again on information and belief, Plaintiff alleges that the Tesla-Warner contractual relationship "included a promotional element or elements, whereby Musk and Tesla expected to be able to affiliate the cybercab with one or more motion pictures from [Warner's] motion picture library," or the library of its subsidiary, which was the domestic distributor for Plaintiff for the 2017 theatrical release of BR2049. *See id.* ¶¶ 86-87. But neither Warner's subsidiary nor any other Warner entity has or ever had sufficient rights to allow Tesla to exploit BR2049 or any of its elements, or any of Plaintiff's marks or goodwill, in connection with the globally livestreamed event at issue here. *See id.* ¶ 87.

On information and belief, Musk specifically wanted to associate the cybercab and Tesla with BR2049. *See id.* ¶ 90. Also on information and belief, Tesla and Musk asked Warner (or one or more of Warner's subsidiaries' employees who were being "actively managed and directed by" Warner on "event issues") for permission and rights

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duster shown in silhouette or near-silhouette"; and a combination of the foregoing elements, "especially in the context of urgent human-AI relationship questions . . . especially if openly labeled or presented as 'Blade Runner'-related by the infringer." FAC ¶¶ 71(a)-(f), 128.

to use the image attached to the FAC as Exhibit A. *See id.* ¶ 90 & n.5; Docket No. 37-1. Yet, no one ever contacted Plaintiff about the brand affiliation proposal (or even a "clip license" proposal), and Plaintiff only learned of Defendants' interest in BR2049 on the day of the event, six hours prior to its scheduled commencement. *See* FAC ¶¶ 92-96.

Notwithstanding Defendants' desire to be able to make use of BR2049, Plaintiff refused them permission to use a still image from BR2049, the image attached as Exhibit A to the FAC. *See id.* ¶¶ 3, 5, 38, 80, 93-97; *see also* Docket No. 37-1. Plaintiff was specific in its communications with certain executives handling licensing attempts/efforts – with a request to relay this position to Warner, Tesla and X[2] (a request that was reportedly honored) – that "under no circumstances should there be any BR2049 affiliation, or any other [Plaintiff] affiliation, express or implied, with Tesla, X, Musk or any Musk-owned company in the course of the October 10, 2024 event, or ever." FAC ¶ 96; *see also id.* ¶¶ 3, 17 (alleging that, prior to the "We Robot" event, Plaintiff "adamantly objected to Defendants suggesting any affiliation whatsoever between BR2049 or [Plaintiff] on the one hand, and Tesla, Musk or any Musk-owned company, on the other," explaining that, beyond "ordinary commercial issues," Plaintiff specifically did not want any association with Musk, considering his "massively amplified, highly politicized, capricious and arbitrary behavior, which sometimes veers into hate speech"). On information and belief, Plaintiff alleges that, once informed that Plaintiff would not accede to Tesla's and Musk's desires, Warner "either effectively blessed Musk and Tesla to incorporate BR2049 in the event anyway, and/or failed to take meaningful action to stop them, although such action was available." *Id.* ¶ 96; *see also id.* ¶ 97 (alleging that Warner "either bless[ed] Musk and Tesla to do it or [did] not stop[] them").

In contrast with the practice of what it describes as "[r]esponsible car makers and ad agencies," *id.* ¶ 13, the FAC asserts that Musk and Tesla "borrow[ed] the storytelling power" of the film anyway by way of their use of a slide at the "We Robot" event (a screenshot of which is attached to the FAC as Exhibit C), "display[ing the slide] full screen for 11 seconds on the global livestream feed as [their] presentation opener." *Id.* ¶¶ 2-3, 5, 18; *see also id.* ¶ 6 (alleging that Musk "want[ed] to borrow the storytelling power and expression of [BR2049] to sell cars and the car company"); *id.* ¶ 7 (alleging

[2] X is not a party to this action.

misappropriation of BR2049's "storytelling power" and BR2049 and Plaintiff's "brand goodwill to advertise, market and sell Tesla's automobiles and Tesla as a company"); Docket No. 37-3. Musk and Tesla made use of artificial intelligence ("AI") to create the slide employed during the event. *See* FAC ¶¶ 2-3, 5; *see also id.* ¶¶ 103-04. Specifically, Plaintiff asserts that Musk and Tesla created "their own near-photo-realistic illustration" of the android main character from BR2049, named "K," "exploring the ruined Las Vegas. *Id.* ¶ 5.

The event began with a Tesla representative taking the stage to note that the presentation "was being made from the Warner Bros. lot, the home of many science fiction films that show visions of the future," before explaining "that the event would involve Tesla showing a vision of the future, and who better than Musk to do it." *Id.* ¶ 99.[3] Once he arrived at the exact scene of the presentation (after being delivered there, through the streets of Warner's lot, by a cybercab), the FAC alleges (accurately, as confirmed by the Court's review of the presentation) Musk said: "So you see a lot of sci-fi movies where the future is dark and dismal, where it's not a future you want to be in." *Id.* ¶ 101. The livestream feed then shifted to a slide with an image of the Earth and the words "What Kind of World Do We Want to Live In?" *Id.*

After two seconds showing that slide, the livestream changed to a second slide, which would ultimately be displayed for about 11 seconds.[4] *See id.* ¶ 102. Plaintiff describes this second slide as appearing at first "like a motion picture still photo (although it isn't)" displaying "a male figure seen from behind, with close-cropped hair, wearing a trench coat or duster, standing in almost full silhouette as he surveys the abandoned ruins of a city, all bathed in misty orange light." *Id.* The words "Not This" appear in the upper-left corner, superimposed on part of the orange sky. *See id.*; Docket No. 37-3.

During the 11-second display of this image, Musk added – according to the FAC (*almost* word-for-word correctly) – voiceover comments, saying "You know, I love

[3] The Court's review of the presentation reveals that the exact language used was: "Just want to thank Warner Brothers for hosting us here. As you know, this is the birthplace of many epic films – many of them depicting a vision of the future. We're here tonight to experience that future, that is closer than you think. And who better than Elon, right, to show us that future." Docket No. 25.

[4] The second slide and the entire "We Robot" presentation are both said to be copyright-infringing works. *See* FAC ¶ 126.

'Blade Runner,' but I don't know if we want that future. I believe we want that duster he's wearing, but not the, uh, not the bleak apocalypse." FAC ¶ 106. The FAC elsewhere *characterizes* Musk's voiceover accompanying the presentation as having "clearly identifie[d] the image as an illustration of the 'Blade Runner' movie set in a world which has suffered a 'bleak apocalypse,' where 'he' (meaning the particular blade runner in question) is wearing a 'duster' (trench coat) while he surveys the distinctly orange-lit ruins of a city in the apocalyptic space," a description which the FAC asserts "only matches a single motion picture in all of Hollywood, or anywhere else: BR2049." *Id.* ¶ 5.[5] The FAC also asserts that "[t]here is also only one blade runner character that fits that description: K." *Id.*[6]

Plaintiff asserts that Musk's reference to "Blade Runner" in his voiceover was "clearly specifically meant to evoke BR2049 rather than the original 1982 Picture," at least in part because Plaintiff believes the context and worldwide goodwill of BR2049 is much more relevant – in part due to "artificially intelligent autonomous cars like the Tesla cybercab being pitched at the event" – to Tesla's and Musk's aims than is the original "Blade Runner" film. *Id.* ¶¶ 107-12, 118. Plaintiff believes that the presentation's second slide was intended "to read visually either as an actual still image from BR2049's iconic sequence of K exploring the ruined Las Vegas," or as a "minimally stylized copy of or illustration of such a still image," or "otherwise as an illustration of a scene from BR2049 and specifically its Las Vegas Sequence." *Id.* ¶ 103. It takes the position that the slide "does in fact objectively read like one or all of these,"

[5] In its Opposition to Tesla's and Musk's motion, Plaintiff likewise asserts that "Musk's accompanying voiceover implicitly, but nonetheless plainly, identifies the image as a scene from BR2049," Docket No. 52, at 2:12-13, and "effectively stated to the audience that the Exhibit C image was supposed to be an illustration of BR2049," *id.* at 7:1-3. *See also id.* at 17:5-6 ("Where the defendant says – especially to the audience – that the work is based on plaintiff's, ..."); *id.* at 17:22-23. The Court has reviewed the presentation itself. It is factually-accurate to say that Musk *referenced* "Blade Runner," or at the very most suggested or intimated "Blade Runner" was depicted. See Docket No. 25. It is inaccurate to assert that he either "clearly" or "plainly" "identified" the slide as a scene from, or illustration of, Blade Runner (or BR2049). Whether he "effectively" did so is an issue that is not particularly relevant at this point in time in this case.

[6] Plaintiff alleges that "K's trench coat or 'duster' is the dominant feature of his wardrobe or costume," and notes that, "[t]hroughout [BR2049], K travels in, and is assisted by, his artificially intelligent, quasi-sentient flying car, or 'spinner,' which is capable of autonomous action." FAC ¶ 57. The film's "Las Vegas Sequence" "follows K as he leaves the spinner . . . and walks in his duster toward and through the misty orange urban desert ruins, often viewed by the camera from behind or in silhouette." *Id.* ¶ 60.

and was likely created with the assistance of an AI image generator, on information and belief making specific reference to K and the Las Vegas Sequence of BR2049 and/or "to add 'Elon Musk in a duster in the foreground,' or similar direction." *Id.* ¶¶ 103-04.

Plaintiff further asserts, on information and belief, that the slide was generated "by an employee or agent of one or more of [Warner], Tesla . . ., or even possibly by Musk himself." *Id.* ¶ 105. It also alleges that "[a]ll of the Defendants participated in its creation, and in its display in the presentation at the event, from a [Warner]-owned building and studio lot, on [Warner]-owned video screens, and otherwise using [Warner]-owned technology infrastructure." *Id.* [7] Alternatively, any defendants who did not so actively participate still "ratified the conduct and knowingly accepted the benefits of it." *Id.* In addition, according to the FAC, Warner "actively monitored . . ., supervised . . ., and ultimately controlled . . . and directed" the "We Robot" event, "at the very least as to the disputed matters that are the subject of" the FAC. *Id.* ¶ 34. However, as part of the "We Robot" event, it was "difficult and problematic" for Warner "to keep Musk bounded by well-established rules of the business," "ultimately fail[ing] to do so when it could have." *Id.* ¶ 18.

Tesla, Musk and others re-posted the "We Robot" livestream, including the "BR2049-infused opening," thousands of times, with millions of total views, such that the false affiliation between Plaintiff, BR2049, Tesla and Musk "is irreparably entangled in the global media tapestry." *Id.* ¶ 19.

Exhibits A and B to the FAC "are examples of 'still images' from [BR2049],"[8] but Plaintiff acknowledges that it is BR2049 itself that is the subject of the registered

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[7] As noted *infra*, Footnotes 13 and 16, these allegations in paragraph 105 of the FAC regarding *Warner's* responsibility for, or participation in, creation of the slide may be ignored.

[8] The FAC places these images in "story context." FAC ¶¶ 69-70. Exhibit A – which Plaintiff alleges "was the image used as the lead visual image for numerous marketing, promotional and publicity press pieces about [BR2049] preceding [the film's] October 2017 initial theatrical release" and is still "to this day the image that appears as the cover image to the official BR2049 marketing and promotional trailer as that trailer appears on YouTube" – "is an image positioned from behind K, with his close-cropped hair, garbed in his distinctive trench coat or 'duster,' as he stands next to his spinner, facing away from the camera to survey the devastated orange-light-bathed Las Vegas cityscape." *Id.* ¶¶ 69, 80. The Exhibit B images – which Plaintiff asserts it also has and still does use "for marketing, promotion and publicity" for BR2049 – are "samples of still images from the Las Vegas Sequence," including "images from K's walk through the ruins to encounter Deckard [the main character from the original Blade Runner film], and from when K is in Deckard's aerie looking out the picture windows at the ruined city." *Id.* ¶¶ 70, 81.

copyright and alleged "infringed work" at issue in this case. *See id.* ¶¶ 35, 37, 125; *see also* Docket Nos. 37-2, 37-3. However, Plaintiff's theory in the FAC is that, "for instances of copying that go beyond literal copying or bodily appropriation of protected elements, identification of protected elements of BR2049 has to involve some level of consideration of the entire Picture,[9] including its plot, themes, dialogue, mood, setting, pace, characters, and sequence of events." FAC ¶ 51. Thus, in Plaintiff's view, still images, "especially if from qualitatively important scenes or sequences," are themselves protected elements of the BR2049 copyright. *Id.* ¶ 41. In fact, they are "also more than just protected elements of [BR2049] that can be looked at alone: they are effective vehicles for quickly evoking other protected elements of [BR2049] to the audience," like the film's plot, theme, dialogue, mood, setting, pace, characters, and sequence of events," "even if those elements cannot be visually identified directly in the still image in question." *Id.* ¶ 42; *see also id.* ¶¶ 45-46.[10] According to Plaintiff, this is also true of "[a]n infringing work that looks like it is or might be a still image from BR2049, . . . especially if such an emulated image is openly characterized by the presenter as meant to be a still from or illustration of BR2049 or protected elements of its story (as happened here)." *Id.* ¶ 42.

Musk and Tesla allegedly directly-infringed Plaintiff's reproduction right via "literal copying of the entirety of BR2049 or of protectable elements of BR2049 such as still images like those in Exhibits A and B [to the FAC], or a partial videorecording of BR2049, to an AI image generator" or by "literal copying of an unauthorized derivative work . . . which itself was generated by literal copying of the entirety of BR2049 or of protectable elements of BR2049 such as still images like those in Exhibits A and B [to

[9] "BR2049" and "Picture" are both defined as the same thing – "Alcon's 'Blade Runner 2049' motion picture" – in the FAC. FAC ¶ 3. As a result, it is unclear what distinction is meant by Plaintiff's use, in this sentence, of both "BR2049" and "Picture."

[10] Plaintiff characterizes motion picture still images as having an "expressive superpower" that "ordinary standalone photographs do not have," and takes the position that the Copyright Act offers a "different statutory treatment" of "motion picture still images" as compared to the separate category of photographs." FAC ¶ 43. But it does not explain what this proposed "different statutory treatment" consists of or how motion picture still images are "to be treated analytically differently" than photographs apart from asserting that the protectable elements of motion picture still images are somehow different than the protectable elements for photographs. *See id.* ¶¶ 48, 50. In the end, the Court is not entirely sure of the purpose of this thread in the FAC; if it is part of an effort to persuade that motion picture still images *should be* treated differently under the Copyright Act, the best audience for that contention is located in Washington, D.C., not this courtroom.

the FAC], or a partial videorecording of BR2049, to an AI image generator. *Id.* ¶¶ 127(a)-(b). They also allegedly violated Plaintiff's right to prepare derivative works, with the second slide from the "We Robot" presentation impermissibly incorporating a host of allegedly protected elements of BR2049. *See id.* ¶¶ 127(d)-(e). They also allegedly violated Plaintiff's right to display BR2049 publicly. *See id.* ¶ 127(f). Plaintiff also asserts that Warner is a direct infringer of Plaintiff's public display rights with the presentation having been "conducted on, and transmitted over, [Warner]-owned or [Warner]-controlled property, infrastructure and systems." *Id.* ¶¶ 127, 127(f).

If Defendants are not each liable for *direct* copyright infringement, Plaintiff asserts that they are each *vicariously* liable for the direct infringements committed by "individual agents, contractors, or other infringers presently unknown," because they each had the right and ability to supervise the infringing activity. *Id.* ¶¶ 141-42. As to Tesla and Musk, those defendants could have refrained from creating the presentation slide in question or including it in the "We Robot" presentation. *See id.* ¶ 142. As to Warner, Plaintiff alleges that it used "its shared services licensing department to perform clearance work for the presentation" and thus, on information and belief, it "had the right and ability to tell the Direct Infringers that their infringing conduct was not acceptable and could not be part of the presentation." *Id.* This is especially the case if the "direct infringers" were "individual agents, employees or contractors of [Warner], or of one or more subsidiaries of [Warner] over which [Warner] exercised actual or practical control."

Musk and Tesla obtained direct financial benefit from the infringement by virtue of the infringing material constituting part of the draw they intentionally used "to sell cars and the Company," increasing consumer interest in Tesla cybercabs, leading to selling more of them or receiving more pre-orders for them. *Id.* ¶¶ 143-45. As to Warner, on information and belief, Musk and Tesla's belief that they could use one or more Hollywood motion picture properties – including BR2049 – at no extra meaningful charge – in contrast to the ordinary 6- to 8-figure charge – was part of the draw for Musk and Tesla to agree to make the payments that Tesla contracted to make to Warner for the event. *See id.* ¶ 146. Plaintiff also alleges, on information and belief, that Warner had a financial incentive to avoid any claims of breach of contract or adjustment of contract price when Musk/Tesla learned they would not be able to achieve the desired brand

affiliation. *See id.* ¶ 147.

In addition to direct and vicarious infringement theories, Plaintiff also lodges a *contributory* infringement theory. It asserts that Tesla and Musk intentionally included Exhibit C in the presentation and could plainly see that it was not an actual still image from BR2049 but rather a stylized copy that would likely be found infringing. *See id.* ¶ 162. Those defendants also knew that Plaintiff had refused permission. *See id.* In its use of its shared services licensing department, Plaintiff asserts on information and belief that Warner was at least being shown image options, including Exhibit C, in advance of the event. *See id.* Musk and Tesla materially contributed to the infringement by including Exhibit C in the presentation. *See id.* ¶ 163. Warner materially contributed to it because the event display, distribution and public performance aspects of the infringement occurred at its studio lot, and with the use and support of its facilities and technology. *See id.* Also on information and belief, Plaintiff asserts that Warner induced the infringement by convincing or encouraging the direct infringers, Tesla and Musk, that Plaintiff's denial of permission "could be circumvented by generation and use of an AI-generated copy of iconic BR2049 imagery." *Id.*

For purposes of its Lanham Act claim, Plaintiff alleges that it owns an unregistered trademark in the words "Blade Runner 2049," which it asserts is "broad enough to include the words 'Blade Runner' in contexts that refer to or include BR2049 (such as, for example, the words 'Blade Runner' not followed by the number '2049,' but alongside iconic images from BR2049, or other callouts to specific scenes or elements of BR2049)." *Id.* ¶ 73. It also asserts that "[s]till images from iconic scenes in BR2049, and audiovisual clips of iconic scenes from BR2049" also serve as "trade dress." *Id.* ¶ 74. Also included as an unregistered mark and/or protectable trade dress, according to Plaintiff's allegations, are "[t]he character 'K,' including descriptions of K, and visual[] images that look like or evoke the character K, and/or that are held out to be the character K, either explicitly or implicitly." *Id.* ¶ 75. Finally, Plaintiff asserts that it has "a protectable Lanham Act interest (mark, brand or trade dress)" in "combinations of elements which evoke or tend to evoke BR2049 in the eyes of the ordinary consumer," including "showing an image like Exhibit C [to the FAC] with an accompanying voiceover discussing a 'post-apocalyptic' 'Blade Runner' movie, especially in an overall

context of robots (replicants are sometimes recognized as a variation of robots) and artificially intelligent, semi-autonomous or wholly autonomous cars." *Id.* ¶ 76.

Plaintiff alleges that Tesla and Musk "have engaged in false representations which are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Tesla and Musk with [Plaintiff] or as to the sponsorship or approval of Tesla's or Musk's goods, services, or commercial activities by [Plaintiff]." *Id.* ¶¶ 177, 180. Specifically, Musk and Tesla used or evoked Plaintiff's BLADE RUNNER 2049 mark, Plaintiff's mark or protectable goodwill in the character K, Plaintiff's protectable trade dress in iconic or recognizable still images from BR2049 (such as those attached as Exhibits A and B to the FAC) such that the presentation slide (Exhibit C to the FAC) appeared to be either an actual still image from BR2049 or a lightly-stylized illustration of K about to enter the irradiated Las Vegas, or a protectable combination of the foregoing. *See id.* ¶ 179. According to Plaintiff, the conduct has the effect of falsely representing that Tesla's and Musk's goods and services are licensed, sponsored, endorsed, or otherwise authorized by Plaintiff, and/or is at the very least misleading on these points. *See id.* ¶¶ 181-82. Plaintiff is informed and believes that discovery will reveal that Warner aided and abetted Tesla's and Musk's alleged Lanham Act violations, during or after those violations. *See id.* ¶ 187.

Plaintiff asserts that it "has spent decades and hundreds of millions of dollars building the BR2049 brand into the famous mark that it now is." *Id.* ¶ 14. It further contends that:

> [t]he words "Blade Runner 2049," the words "Blade Runner" used in contexts that specifically evoke BR2049 distinct from the original 1982 "Blade Runner" motion picture, visual images or audiovisual presentations which evoke BR2049's main character "K," and/or which evoke iconic sequences and settings from BR2049, are all protected marks and trade dress with secondary meaning.

Id. According to the FAC, this secondary meaning "clearly" exists "in the automotive market space," at least in part because Plaintiff "has an established record of doing business with major automotive brands to affiliate themselves and their car products with [Plaintiff] and BR2049." *Id.* ¶ 15. Plaintiff asserts that at the time of the "We Robot" event, Plaintiff "was in talks with at least one automotive brand for partnerships on [Plaintiff's] BR2049-based *Blade Runner 2099* television series" that is currently in

production, meaning that Defendants' conduct is likely to cause confusion among Plaintiff's potential brand partner customers and may have already caused actual confusion with potential *Blade Runner 2099* car partners. *Id.* ¶ 16.

II. Analysis

A. Procedural Standard & Appropriately-Considered Materials

Under Rule 12(b)(6), a court must (1) construe a complaint in the light most favorable to the plaintiff, and (2) accept all well-pleaded factual allegations as true, as well as all reasonable inferences to be drawn from them. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.), *amended on denial of reh'g*, 275 F.3d 1187 (9th Cir. 2001); *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998). Dismissal pursuant to Rule 12(b)(6) is proper only where there is either a "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990); *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 561-63 (2007) (dismissal for failure to state a claim does not require the appearance, beyond a doubt, that the plaintiff can prove "no set of facts" in support of its claim that would entitle it to relief).

In its consideration of the motion, a court is generally limited to the allegations on the face of the complaint (including documents attached thereto), matters which are properly judicially noticeable and "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *See Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001); *Branch v. Tunnell*, 14 F.3d 449, 453-54 (9th Cir. 1994), *overruling on other grounds recognized in Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002). Nonetheless, "while a court must generally refrain from considering extrinsic evidence in deciding a 12(b)(6) motion, it may [also] consider documents on which the complaint '*necessarily relies*' and whose 'authenticity . . . is not contested.'" *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1141 n.5 (9th Cir. 2003) (emphasis added); *see Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) ("A court may consider evidence on which the complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of

the copy attached to the 12(b)(6) motion."); *see also Steinle v. City & Cty. of S.F.*, 919 F.3d 1154, 1162-63 (9th Cir. 2019); *Northstar Fin. Advisors Inc. v. Schwab Invs.*, 779 F.3d 1036, 1042 (9th Cir. 2015) ("'[W]e may consider materials incorporated into the complaint . . . .'") (quoting *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010)).

Here, the parties agree that the Court may consider – along with the FAC's allegations and other attachments – BR2049, the "We Robot" presentation in its entirety, and the second slide of that presentation (attached as Exhibit C to the FAC) in connection with these Rule 12(b)(6) proceedings. *See, e.g.*, *Rentmeester v. Nike, Inc.*, 883 F.3d 1111, 1123 (9th Cir. 2018); *Christianson v. W. Pub. Co.*, 149 F.2d 202, 203 (9th Cir. 1945). However, Plaintiff has filed objections to the Court's consideration of certain other materials in connection with both motions. *See* Docket Nos. 53, 55.

First, the Court sustains Plaintiff's objection to consideration of what Warner contends is the actual, *and only*, contract between Warner and Tesla in connection with the "We Robot" event, along with the earlier-filed (in connection with the motion to dismiss the original Complaint) Declaration of Rachel Jennings (and attached exhibits), Docket No. 23-2, attempting to introduce that contract. Plaintiff has not given any indication in the FAC that this document is the contract supporting its allegations about the binding obligations on Warner in connection with the event, though Warner insists that it is (and that it is therefore – in Warner's view – both referenced in, and central to, Plaintiff's FAC). Warner is not the party that gets to tell that story, at least at this procedural stage. Whether construed as an objection to the document's authenticity or a factual assertion that there is something more out there that governs the Warner-Tesla relationship and obligations, the Court cannot rely upon Warner's assertions regarding the full scope of that relationship on this motion. More-generally, the Court obviously cannot credit Defendants' factual assertions that contradict factual assertions Plaintiff makes in the FAC (including the attempted introduction of an image that Tesla asserts it *actually licensed* in the creation of the slide attached as Exhibit C to the FAC). *See* Docket No. 53, at 6:1-8:12; Docket No. 55, at 3:15-20, 4:25-5:12.

As to whether or not Plaintiff owns the word mark, "Blade Runner," the Court may observe that Plaintiff has *not* alleged ownership of such a mark, *see* FAC ¶¶ 73-75,

179, though Plaintiff now professes that it *could* allege that it "in fact own[s] a Lanham Act-cognizable ownership interest in the ['Blade Runner'] word mark," *see, e.g.*, Docket No. 55, at 5:23-6:1. Thus, the Court will not consider the truth of Defendants' position as to whether or not Plaintiff *in fact* has such an ownership stake, but may consider the limitations in the FAC as to what Plaintiff alleges it *does* own in the way of marks. To the extent Warner makes an assertion about who *actually* owns rights associated with the original "Blade Runner" film, the Court may *not* consider those contentions.

Third-party car branding in the theatrical release of BR2049 is not conceivably relevant to the resolution of these motions. As such, Plaintiff's limited "caveat" to the Court's consideration of the DVD version of the film is neither here nor there.

Finally, published rulings issued in other cases, concerning Rule 8 compliance or otherwise, may always be considered pursuant to at least principles of judicial notice.

Now that there is an understanding of what the Court concludes it may consider in connection with these motions, it turns to the parties' arguments regarding the FAC's specific claims.

B. Direct Copyright Infringement

Plaintiff's first claim for relief is for "direct copyright infringement." To prevail on a standard copyright infringement claim, Plaintiff "must demonstrate '(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.'" *Benay v. Warner Bros. Entm't, Inc.*, 607 F.3d 620, 624 (9th Cir. 2010) (quoting *Funky Films, Inc. v. Time Warner Entm't Co.*, 462 F.3d 1072, 1076 (9th Cir. 2006) and *Feist Pubs., Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991)), *overruled on other grounds by Skidmore as Tr. for Randy Craig Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051 (9th Cir. 2020) (en banc); *see also Skidmore*, 952 F.3d at 1064 (describing the second element as copying "protected aspects of the work"); *Corbello v. Valli*, 974 F.3d 965, 973 (9th Cir. 2020) (same). Beyond this basic, and oft-repeated observation, several years ago the Ninth Circuit, sitting *en banc* in *Skidmore*, clarified the process for analyzing claims of copyright infringement.

Skidmore clarifies that there are two separate components to copyright infringement's second prong of "copying protected aspects of the work": "copying" and "unlawful appropriation." *Skidmore*, 952 F.3d at 1064. In contrast to copying, "unlawful

appropriation" requires that works "share *substantial* similarities." *Skidmore*, 952 F.3d at 1064. Substantial similarity is a fact-specific inquiry, but it "'may often be decided as a matter of law.'" *Benay*, 607 F.3d at 624 (quoting *Funky Films*, 462 F.3d at 1076 and *Sid & Marty Krofft Tele. Prods., Inc. v. McDonald's Corp.*, 562 F.2d 1157, 1164 (9th Cir. 1977)). Musk's and Tesla's motion primarily focuses on this issue so far as Plaintiff's direct infringement claim is concerned. As to that motion, it is this relatively-restricted scope of their argument as to that claim that is the decisive point.

1. The Limits of Tesla's/Musk's Argument

Tesla's and Musk's argument – up until their Reply, which is too late[11] – is almost-exclusively only that Plaintiff's direct copyright infringement claim cannot succeed because Plaintiff cannot show substantial similarity between its copyrighted work and the "We Robot" presentation or the 11-second slide used therein. *See* Docket No. 48-1, at 4:12-14:2. With a minor exception, their argument did *not* timely cover Plaintiff's "literal copying" theory of direct copyright infringement based upon the allegation that Plaintiff's copyright was infringed because – according to Plaintiff's allegations – Musk/Tesla fed a literal copy of Plaintiff's copyrighted work into an AI-driven image generator in order to achieve the ultimate slide displayed during the "We Robot" event. *See* FAC ¶¶ 127(a)-(b). Musk's and Tesla's limited discussion of Plaintiff's "literal copying" theory is to highlight that Plaintiff's allegations in this regard are based "on information and belief," that the theory is not plausible because Tesla has already told Plaintiff how it claims to have created the 11-second slide image used during the presentation, and because a review of BR2049 and the "Accused Work" (*but see* Footnote 4, *supra*) somehow makes it clear that Tesla/Musk did not "literally copy" BR2049 in the manner Plaintiff asserts.

Musk and Tesla concede that "pleading on information and belief is permissible where the facts are peculiarly within the defendant's possession," among other situations. *See* Docket No. 48-1, at 14:4-5; *see also Soo Park v. Thompson*, 851 F.3d 910, 928 (9th Cir. 2017) ("'The *Twombly* plausibility standard . . . does not prevent a plaintiff from

[11] The Court does not address arguments raised for the first time in a Reply brief where there is no reason those arguments could not have been set forth in initial motion papers (thereby giving an opponent an opportunity to respond). Clearly, Tesla and Musk were aware of the "literal copying" aspect of Plaintiff's direct infringement claim at the time they filed their motion.

pleading facts alleged upon information and belief where the facts are peculiarly within the possession and control of the defendant or where the belief is based on factual information that makes the inference of culpability plausible.'") (quoting *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010)).[12] They do not explain how that does not exactly describe the situation here, where Plaintiff is certainly not in a first-hand-knowledge position to know exactly how Musk/Tesla created the image in question (apart from Tesla's simple say-so).

Moreover, as noted above, "a plaintiff may plead facts on information and belief 'where the belief is based on factual information that makes the inference of culpability plausible.'" *Waln v. Dysart Sch. Dist.*, 54 F.4th 1152, 1161 (9th Cir. 2022) (quoting *Soo Park*, 851 F.3d at 928 (9th Cir. 2017)); *see also* Stevenson & Fitzgerald, *Rutter Group Prac. Guide: Federal Civ. Pro. Before Trial* (The Rutter Group 2024), ¶ 8:128.22, at 8-34 – 35 (indicating that "information and belief" allegations simply require "some factual content," whereas "conclusory allegations based on nothing more than 'information and belief' will not suffice"); *cf. Nayab v. Capital One Bank (USA), N.A.*, 942 F.3d 480, 493-94 (9th Cir. 2019) ("Even under the more rigid pleading standard of Federal Rule of Civil Procedure 9 . . . the pleader is not required to allege facts that are 'peculiarly within the opposing party's knowledge,' and allegations 'based on information and belief may suffice,' 'so long as the allegations are accompanied by a statement of facts upon which the belief is founded.'") (quoting *Wool v. Tandem Computers Inc.*, 818 F.2d 1433, 1439 (9th Cir. 1987)). Here, there is sufficient factual information to do just that, and therefore to permit Plaintiff's "information and belief" allegations on the topic of how Exhibit C to the FAC was created.

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[12] In its own motion, Warner asserts that "in a more recent opinion, the Ninth Circuit explained that *Soo Park* did not create an exception to federal pleading standards for allegations made on information and belief." Docket No. 49-1, at 11:1-3 (citing *Reaper v. Ace Am. Ins. Co.*, No. 23-15178, 2024 WL 810697 (9th Cir. Feb. 27, 2024)); *see also* Docket No. 56, at 3:17-20 (Tesla's and Musk's Reply brief making a similar contention). *Reaper* is an unpublished "memorandum" disposition, not a Ninth Circuit "opinion." *See* Ninth Cir. R. 36-1. Though there is no prohibition on it citing *Reaper*, *see* Fed. R. App. P. 32.1(a), Warner's brief on this point reflects a fundamental misunderstanding both with respect to the distinction between a memorandum disposition and an opinion in terms of their precedential status and with respect to the limitations placed on a three-judge panel of the Ninth Circuit overruling or taking a different approach from an earlier three-judge Ninth Circuit *actual* opinion. *See* Ninth Cir. R. 36-3(a); *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc); *Cascadia Wildlands v. Scott Timber Co.*, 105 F.4th 1144, 1151 (9th Cir. 2024) ("As a three-judge panel, we are, of course, bound by circuit precedent."). *Soo Park* is binding Ninth Circuit law (along with the other Ninth Circuit opinions the Court has cited above that bear upon the practice of information-and-belief allegations).

In particular, Plaintiff has alleged that Musk and Tesla attempted to get permission to use BR2049, but that attempt was denied just hours before the "We Robot" presentation was to begin (with at least *the late-nature* of that denial apparently due to the fact that no one attempted to approach Plaintiff about the inquiry until that very day). Plaintiff also has placed before the Court the ultimate image used and samples of still images taken from BR2049. It is not controversial to observe that there are certainly several similarities (though the Court does not address the topic of "substantial similarity" here) between the ultimate image Musk and Tesla used and the source material Plaintiff alleges they used. Given the tight timeframe Musk and Tesla were working with in light of their last-minute request – and the resulting last-minute denial – to make use of BR2049, it is not at all implausible for Plaintiff to allege on information-and-belief that they made use of an AI image-generator to come up with the finished product. In addition, the images are not so different that the Court can conclude Tesla and Musk could not possibly have literally copied in the manner so-alleged. Thus, each of Tesla's and Musk's timely-raised limited arguments regarding the "literal copying" theory fail.

Because Musk and Tesla did not enunciate a way to successfully dispose of Plaintiff's "literal copying" theory in their motion, at a bare minimum it – and the direct copyright infringement claim in general – survives this motion against them. This Court does not typically "dismiss" theories, or parts of claims in connection with a Rule 12(b)(6) motion. As such, Musk's and Tesla's "substantial similarity"-directed argument, and the numerous ways in which Plaintiff believes it survives those arguments, are not resolved at this time.

2. Warner's "Volitional Conduct" Argument

Apart from relying on Musk's/Tesla's arguments for why Plaintiff's direct copyright infringement claim should be dismissed, Warner makes the additional argument that Plaintiff has not and cannot plead any causation, or "volitional conduct," by Warner. *See Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 666 (9th Cir. 2017) ("*Giganews*") ("To establish a prima facie case of direct infringement, a plaintiff 'must show ownership of the allegedly infringed material' and 'demonstrate that the alleged infringers violated at least one exclusive right granted to copyright holders under 17

U.S.C. § 106.' In addition, direct infringement requires the plaintiff to show causation (also referred to as 'volitional conduct') by the defendant.") (omitting internal citation) (quoting *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001)). Plaintiff concedes that it must plead this element when a copyright holder's display right is at issue. *See* Docket No. 54, at 10:5-9.

Warner asserts that Plaintiff's only theory on this point is that the alleged violation of Plaintiff's public display rights "was conducted on, and transmitted over, [Warner]-owned or [Warner]-controlled property, infrastructure and systems (specifically including [Warner's] livestreaming infrastructure systems)." Docket No. 49-1, at 7:16-24 (citing FAC ¶ 127).[13] Warner likens this situation to the conduct alleged in *Giganews*, which was insufficient to meet this requirement of a direct infringement claim.

Plaintiff responds that Warner is "reading the 'volitional conduct' requirement too strictly" and ignoring what the FAC actually says Warner did. Plaintiff relies on *Bell v. Wilmott Storage Services, LLC*, 12 F.4th 1065 (9th Cir. 2021), for the first point.

Bell explained that the Ninth Circuit had "held that a website or service that provides only a platform for third-party users to upload, download, and share content, *i.e.*, merely using the platform as a vehicle, has not engaged in volitional conduct in [the relevant] sense, because it is the users who cause infringement." *Id.* at 1081. "By contrast, one who 'exercised control' or 'selected any material for upload, download, transmission, or storage' has acted volitionally." *Id.* (quoting *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 732 (9th Cir. 2019)).

Plaintiff concedes that "a strictly passive supplier or passive owner of equipment" would not have sufficient "volitional conduct." Docket No. 54, at 12:6-9. But Plaintiff

[13] Warner takes the position that the Court can ignore the allegation in paragraph 105 of the FAC that "[a]ll of the Defendants participated in [the accused work's] creation" because that assertion is assertedly a "remnant" of Plaintiff's original Complaint, which Plaintiff indicated – in its Opposition to Warner's motion to dismiss the original Complaint (mooted by the filing of the FAC) – it was moving away from in the FAC, "reduc[ing the] scope [of its direct infringement claim] as to [Warner], relative to Musk and Tesla." Docket No. 49-1, at 7:14-16 & n.5 (quoting Docket No. 39, at 5:16-17). Plaintiff does not take issue with this contention – apart from stating that Warner has "correctly note[d]" that, as to Warner specifically, "the FAC limits the direct infringement claim to [Warner's] violation of Plaintiff's Section 106(5) display rights, by the unauthorized display of Exhibit C and the event captured in the We Robot Recording, from the [Warner] lot, over [Warner's] systems," Docket No. 54, at 10:22-26 – in its opposition to Warner's motion, which the Court interprets as a concession on the point. As such, this allegation in paragraph 105 of the FAC does not weigh into the Court's consideration of the survival of this claim with respect to Warner.

also argues that Warner "fails to acknowledge . . . that if the equipment supplier or owner is more than strictly passive by, for example, 'exercising control' or by 'select[ing] any material for upload, download, transmission, or storage,' the volitional conduct requirement is satisfied." *Id.* at 12:11-15. Plaintiff believes that its allegations at paragraphs 86-98 of the FAC satisfy that standard: that Warner "actively worked on Musk and Tesla's behalf to try to get [Plaintiff] to give Musk and Tesla permission to use BR2049 for the marketing event." *Id.* at 12:18-20. Plaintiff also offers that, if needed, it could:

> amend to more expressly state that [Warner's] shared services personnel expressly told [Plaintiff's] personnel at the time (on the afternoon of October 10, 2024) that executives at the 'highest levels' of [Warner] 'not located in Burbank' had firmly directed the shared services personnel in Burbank to clear BR2049 for Musk and Tesla with urgency, because of the importance of the Musk-Tesla event to the larger [Warner] entity, and Musk (or Tesla) wanted BR2049.

Id. at 12:20-26. Plaintiff believes that "[i]t certainly seems that actively helping Musk and Tesla to use BR2049, a piece of content which Musk specifically wanted and expected to get as part of his expensive event at the [Warner]-owned Burbank studio lot, just hours before the infringement, adequately constitutes [Warner] 'exercising control' or 'select[ing] any material for . . . transmission.'" *Id.* at 12:26-13:4. However, Plaintiff cites no case law or other authority supporting that belief.

Warner responds that *Bell* is actually consistent with the point Warner is trying to make here. In contrast with *Bell* – where the infringing photo existed on the defendant's server hosting the website (which the defendant managed), *see* 12 F.4th at 1070, 1081, and where the Ninth Circuit explained that the defendant "did not merely function as an online platform where third-party users independently upload and share materials," *id.* at 1081 – here Warner is only alleged to be a passive supplier of equipment and/or means.

With respect to paragraphs 86-98 – cited by Plaintiff in response to Warner's volitional-conduct argument – Warner states that these allegations are limited to "discussions between the Defendants and that [Warner] tried to obtain permission from Plaintiff for Musk and Tesla to use BR2049." Docket No. 57, at 3:21-23. Warner points out that this (failed) clearance work has no apparent connection to any right or ability to supervise or control Musk's or Tesla's decisions concerning what Musk and Tesla

eventually used in connection with their "We Robot" presentation. Warner also argues that Plaintiff's proposed amendment on this topic would do nothing to move the ball on the question of Warner's right or ability to control Musk's/Tesla's decision – "[t]he fact that [Warner] was helping to clear BR2049 for use at the event merely shows that [Warner] sought to go through the proper channels to obtain permission to use Plaintiff's work." Docket No. 57, at 4:11-13 (emphasis omitted).

The Court must agree with Warner here, and disagree with Plaintiff's position that Warner's argument amounts, simply and improperly, to "factual denial." Docket No. 54, at 13:5-6. Warner has actually directly addressed the facts as Plaintiff has alleged them. Warner's (failed) attempts to clear permission for Musk/Tesla were in no way demonstrative of Warner "exercising control" or of Warner selecting any material that actually wound up in, or contributed to, the "We Robot" event. Nothing that Plaintiff has indicated that it could add by way of amendment would make any difference to that observation/conclusion, because that additional material still relates only to Warner's (failed) efforts at clearance. There is nothing *factual* (or that the Court must credit as true) that Warner played any selection-role beyond that failure. *See also* Footnote 20, *infra*.

At most, Plaintiff alleges that, after last-minute attempts to secure rights through Plaintiff failed, Warner essentially "stood by" and did nothing, with Plaintiff asserting that Warner "either effectively blessed Musk and Tesla to incorporate BR2049 in the event anyway, and/or failed to take meaningful action to stop them, although such action was available," "empower[ing]" Musk "to do it anyway." FAC ¶¶ 96-97. Even ignoring that the allegation is made on information and belief (and on this particular point Plaintiff does not have sufficient facts surrounding the allegation to make it in this manner), this is not exercising control or selecting material. And there is nothing akin to the website-owner defendant's hosting of infringing content on its servers in *Bell*. Instead, Plaintiff's allegations reveal that Warner acted, at most, as a "platform for third-party users to upload, download, and share content, *i.e.*, merely using the platform as a vehicle." *Bell*, 12 F.4th at 1081. As a result, unless it indicates it has something more to add that, for some good reason, it has not already notified the Court about by way of its Opposition brief, the Court is inclined to conclude that Plaintiff's claim for direct copyright

infringement against Warner must be dismissed without leave to amend.

The claim will survive against Tesla and Musk, however.

C. Vicarious and Contributory Copyright Infringement

Plaintiff's second and third claims for relief are for vicarious and contributory copyright infringement. To begin with, Tesla's and Musk's motion presents no argument with respect to the contributory copyright infringement claim other than that it would necessarily fail if their motion is successful in disposing of the direct infringement claim, *see* Docket No. 48-1, at 14:25-15:4, and Warner's motion explicitly *excludes* the claim from its scope, *see* Docket No. 49-1, at 1:5-7. Because Tesla and Musk have not achieved their goal on this motion with respect to the direct infringement claim, Plaintiff's contributory infringement claim necessarily survives these motions.

As to the FAC's copyright claims, therefore, that leaves Plaintiff's claim for vicarious copyright infringement. "Vicarious infringement occurs when one profits from direct infringement while declining to exercise a right to stop or limit it." *Luvdarts, LLC v. AT & T Mobility, LLC*, 710 F.3d 1068, 1071 (9th Cir. 2013). More specifically, such liability "attaches if [a defendant] had both the (1) 'right and ability to supervise the infringing activity' and (2) 'a direct financial interest' in the activity." *Id.* (quoting *A & M Records*, 239 F.3d at 1022); *see also Range Road Music, Inc. v. East Coast Foods, Inc.*, 668 F.3d 1148, 1155 (9th Cir. 2012) ("To impose vicarious liability on a defendant for copyright infringement, 'a plaintiff must establish that the defendant exercises the requisite control over the direct infringer and that the defendant derives a direct financial benefit from the direct infringement.'") (quoting *Perfect 10, Inc. v. Amazon.com, Inc.*, 487 F.3d 701, 729 (9th Cir. 2007) ("*Amazon.com*")); *MDY Indus., LLC v. Blizzard Entm't, Inc.*, 629 F.3d 928, 938 (9th Cir. 2010) (identifying "right and ability to control" as required element).

1. Tesla and Musk

Tesla's and Musk's motion as to this claim (at least beyond reliance on the contention – already addressed above – that Plaintiff's direct infringement claim must fail, that is) is limited to arguing that Plaintiff has not pled the existence of a *direct* financial benefit from any alleged infringing activity. Insofar as published, precedential, authority is concerned, they rely exclusively on *Erickson Productions, Inc. v. Kast*, 921

F.3d 822, 829 (9th Cir. 2019).

In *Erickson Productions*, the Ninth Circuit vacated a jury's liability verdict that had been in favor of the plaintiffs on a vicarious infringement claim. *See Erickson Prods.*, 921 F.3d at 826. The defendant owned a real estate wealth management company, and had hired a website developer to redevelop his company's website. *See id.* Three infringing photos made their way onto the company's developmental website. *See id.* at 827 & n.1. The plaintiff's theory was that, by including unlicensed photos on the website, the defendant was both able to continue a business opportunity he desired and to avoid a required developmental licensing fee. *See id.* at 827. On appeal, the plaintiff identified what it saw as three "direct financial benefits": "(1) the photographs drew customers to purchase [the defendant's] services; (2) [the defendant] avoided paying licensing fees to [the plaintiff]; and (3) "[the defendant] was able to 'rush' the launch of his website." *Id.* at 829. The Ninth Circuit agreed with the defendant that the plaintiff had not presented any evidence "that could constitute a direct financial benefit as a matter of law." *Id.*

The Ninth Circuit began its analysis by announcing that "'[t]he essential aspect of the direct financial benefit inquiry is whether there is a causal relationship between the infringing activity and any financial benefit a defendant reaps.'" *Id.* (quoting *Ellison v. Robertson*, 357 F.3d 1072, 1079 (9th Cir. 2004)). At least in the context of a website,[14] however, infringing material must "'act[] as a draw for customers,'" as opposed to being "'just an added benefit.'" *Id.* (quoting *Ellison*, 357 F.3d at 1078-79). The plaintiff in the case did not contend that anyone visited the website in question "in order to view his photographs or purchased his services because they saw the photographs." *Id.* at 830. Beyond that note, perhaps more-importantly, the Ninth Circuit explained that "[i]f [the defendant] had a direct financial interest in every piece of content on this website that arguably made the website marginally more attractive or presentable, then the requirement of a causal link would be erased." *Id.* Thus, it concluded that the plaintiff had not argued that the photographs "were anything more, at best, than an 'added benefit' to visitors of [the defendant's] website." *Id.*

[14] As noted *infra*, Plaintiff has not addressed *Erickson Productions* at all. Therefore, it certainly has not argued that the case should be limited to the context of infringing material appearing on websites.

The Ninth Circuit next examined the plaintiff's argument that the defendant's *avoidance of licensing fees* could constitute a direct financial benefit. It rejected that argument too. *See id.* It took pains to first explain that, in the context of a claim for vicarious infringement, the avoided-license-fee theory must be that the alleged vicarious infringer received a direct financial benefit from the alleged direct infringer's avoidance of a licensing fee, but that the direct infringer's saving of money cannot satisfy the requirement of a direct financial benefit to the vicarious infringer. *See id.* "Otherwise, the requirement of a direct financial benefit would be rendered meaningless, since – at least where, as here, licenses are for sale – a direct infringer necessarily saves money by failing to obtain a license." *Id.* Yet, even if the direct-infringer website developer had "turned its lower costs from fee avoidance into lower prices for its website design services," this savings benefit to the alleged vicarious infringer "would not be 'direct,' since it would reach [that defendant] only incidentally, via [the website developer's] intervening decision to cut prices." *Id.* at 830-31.

Unfortunately, Plaintiff's single-paragraph response in connection with its vicarious infringement claim completely ignores *Erickson Productions*. *See* Docket No. 52, at 18:2-21. Instead, in an echo of its answer to Warner's volitional-conduct argument addressed *supra*, it simply argues that Tesla and Musk have read the rules regarding such a claim "too narrowly" and, citing an unpublished district court decision, that "all that is needed is a showing that 'there is a causal relationship between the infringing activity and *any* financial benefit a defendant reaps.'" *Id.* at 18:4-7 (emphasis added) (quoting *Dish Network LLC v. Jadoo TV, Inc.*, No. 20-cv-01891-CRB, 2023 WL 4004115, at *14 (N.D. Cal. June 13, 2023)[15]). Insofar as this ignores the requirement that such financial benefit be "direct," this is a clear misstatement – or at least understatement – of Ninth Circuit law on the topic.

Plaintiff also believes – without citation to supporting authority – that "[i]ntentionally using the infringing activity as the lead of an advertisement to semiotically move the audience to be more receptive to buying company stock and the

[15] The *Dish Network* case involved defendants who were sued for selling set-top boxes and mobile applications that consumers use to receive television channels. In other words, the whole purpose of the business was to transmit allegedly-infringing material. This is a far cry from the situation at hand here, involving a media presentation created for the ultimate purpose of promoting Tesla's and Musk's automobiles.

company's products is a *direct enough* causal relationship." *Id.* at 18:9-11 (emphasis added). It is unclear how it can make that argument in a way that is consistent with *Erickson Productions*. Plaintiff's allegations that the alleged infringing material itself acted as a "draw" are simply too conclusory.

In sum, it appears that Plaintiff has no response to *Erickson Productions*, that the allegedly-offending material in the "We Robot" event is indistinguishable from the mere "added benefit" described in that case, and that Plaintiff's vicarious infringement theory comes up short with respect to Tesla and Musk. Plaintiff has not explained how it could possibly amend around these observations, meaning that a dismissal of the claim as to Tesla and Musk is likely to be without leave to amend.

2. Warner

Unlike Tesla and Musk, Warner challenges Plaintiff's ability to successfully plead *either* of the required vicarious infringement elements.

a. Right/Ability to Supervise/Control

"A defendant 'exercises control over a direct infringer when he has both a legal right to stop or limit the directly infringing conduct, as well as the practical ability to do so.'" *Range Road*, 668 F.3d at 1155 (quoting *Amazon.com*, 487 F.3d at 730).

With respect to the right/ability to supervise/control, Warner argues that Plaintiff's allegations are conclusory (and on information and belief), and/or are based on Warner's pre-event clearance efforts and mere awareness of the situation. Warner also relies on what it insists is the actual and only contract between itself and Tesla in order to contradict Plaintiff's allegations on this point but, as explained above, the Court will not consider that document in connection with these motions. Warner does correctly argue that the Court is not required to accept as true Plaintiff's allegations that any direct infringers were Warner's agents, employees, or contractors. Those allegations are entirely conclusory.[16] Warner also argues that Plaintiff's control/supervision allegations fall short of those present in *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259 (9th Cir. 1996), a case that Warner also asserts was weakened by the later-decided *Amazon.com*.[17]

[16] In Reply, Warner accurately notes that Plaintiff has not responded on this point, giving the Court no reason to question Warner's position.

[17] The original decision in *Amazon.com*, 487 F.3d 701, was later superseded. *See* 508 F.3d 1146 (9th Cir. 2007).

The Court begins here with the observation that this is not a quintessential situation involving, for example, ownership of a music venue where infringing musical compositions are regularly performed (financially benefitting that venue and its owner). *See Range Road*, 668 F.3d at 1151-53, 1155; *Fonovisa*, 76 F.3d at 262 (referencing "dance hall cases"). Nor is this even a more-generally-described situation where continued, unquestionable, known infringement has occurred, and is continuing to occur, in a particular forum, and a defendant has the ability to block infringing users from accessing that forum. *See Perfect 10, Inc. v. Visa International Service Association*, 494 F.3d 788, 803-04 (9th Cir. 2007) ("*Visa International*"); *A&M Records*, 239 F.3d at 1023.[18] As far as the FAC has identified, this was a one-time event, and Warner had no notice of any alleged infringing activity until the "We Robot" presentation was already up on the screen/livescreen. *See also* Footnote 20, *infra*. Were Musk and/or Tesla an alleged repeat offender/infringer using Warner's resources and instrumentalities for publication, there might be a different answer in this situation.

Instead, Plaintiff has alleged here[19] that Warner took certain steps in advance of the "We Robot" event in an attempt to obtain proper clearance of BR2049, but that those efforts failed. Beyond that, Plaintiff simply asserts – without citation to any facts supporting the assertion, making it an improper/insufficient information-and-belief allegation – that Warner "blessed Musk and Tesla to incorporate BR2049 in the event anyway, and/or failed to take meaningful action to stop them, although such action was available," leaving Musk to feel "empowered" to use BR2049 anyway. FAC ¶¶ 96-97, 142. Plaintiff has made no effort to explain what "such action was available" means

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[18] As Warner notes in support of its motion, "there was no dispute [in *Fonovisa*] that the swap meet operators were actually aware that their vendors were selling counterfeits of the plaintiff's recordings." Docket No. 57, at 6:1-4 (citing *Fonovisa*, 76 F.3d at 261); *see also Fonovisa*, 76 F.3d at 260 (explaining that setting was swap meet/flea market "where third-party vendors *routinely* sell counterfeit recordings") (emphasis added); *id.* at 261 ("There is also no dispute for purposes of this appeal that Cherry Auction and its operators were aware that vendors in their swap meet were selling counterfeit recordings in violation of Fonovisa's trademarks and copyrights.").

[19] As noted *infra*, Plaintiff has directed the Court to paragraphs 85-98 and 139-148 of the FAC in that portion of its response to Warner's motion that is relevant to this claim. These paragraphs reflect what the Court says about them above, nothing more (that is relevant here). Although paragraph 139 technically incorporates every other paragraph in the FAC, Plaintiff's specification of particular paragraphs seems to indicate that it does not ask the Court to fine-tooth-comb the entire FAC in search of a relevant factual allegation.

factually. *See also id.* ¶ 18 (alleging that Warner "ultimately failed" "to keep Musk bounded by well-established rules of the business" "when it could have"); *id.* ¶ 142 (alleging on information and belief that "the issue of whether or not Musk and Tesla should be allowed to use any aspect of the BR2049 property in the event and whether [Warner] should do anything to stop them from doing so was raised internally at [Warner] to a very high level [Warner] executive, such that [Warner] was actively aware of the issue, and did nothing to stop it"). The other allegations on this topic are entirely conclusory, meaning that the Court need not accept them as true. *See id.* ¶ 34 (alleging that the "We Robot" event "was actively monitored by, supervised by, and ultimately controlled by and directed by executives at" Warner); *id.* ¶ 142. Even if the Court were to accept as true Plaintiff's summary assertion that, because of its pre-clearance role/efforts, Warner must have had the right and ability to tell Tesla/Musk that their infringing conduct was not acceptable and could not be part of the presentation, *see id.*, Ninth Circuit authority indicates that being in that position is insufficient for purposes of this element.

In *Visa International*, the defendant payment network had certain rules and regulations that merchants and member banks had to agree to follow. *See* 494 F.3d at 802. Those rules "prohibit[ed] member banks from providing services to merchants engaging in certain illegal activities and require[d] members and member banks to investigate merchants suspected of engaging in such illegal activity and to terminate their participation in the payment network if certain illegal activity is found." *Id.* at 802-03. Though the plaintiff had notified the defendants that underlying copyright infringement was occurring and the defendants "could have stopped processing credit card payments to the infringing websites," these allegations still were not sufficient to support a finding of the defendant's "right and ability to control the infringing activity." *Id.* at 803.

The Ninth Circuit explained that the right "to affect . . . infringing acts to some degree" or the right to terminate an advertisement or sponsorship relationship still would not equate to a right to stop direct infringement, because the direct infringers can still "'continue to reproduce, display, and distribute its infringing copies'" even after such a termination occurs. *Id.* (quoting *Amazon.com*, 487 F.3d at 730). This was consistent with the Circuit's *Amazon.com* decision. *See* 508 F.3d at 1173-74. "[T]he mere ability to

withdraw a financial 'carrot' does not create the 'stick' of 'right and ability to control' that vicarious infringement requires." *Id.*; *see also id.* at 804 ("[The defendants] cannot take away the tools the offending websites use to reproduce, alter, and distribute the infringing images over the Internet. They can only take away the means the websites currently use to sell them."); *id.* ("[T]he ability to exert financial pressure does not give Defendants the right or ability to control the actual infringing activity at issue in this case. Defendants have no absolute right to stop that activity – they cannot stop websites from reproducing, altering, or distributing infringing images.").

The same is true here; there is nothing indicating that Warner had such a supervisory/controlling position or role *vis a vis* Tesla and Musk that it could have prevented Tesla and Musk from doing what it is that Plaintiff alleges those defendants did in creating the particular slide exhibited during the "We Robot" event. A generic allegation that Warner "actively supervised and managed [the business and contractual relationship with Musk and Tesla]," FAC ¶ 85, is not the same as alleging – let alone *factually* – that Warner actively supervised and managed the selection of material to include in the "We Robot" presentation. And there are no *facts* alleged that Warner had any foreknowledge concerning the particular image that Tesla and Musk were planning, and did, display. *See also* Footnote 20, *infra*. "Ratification" and knowing-acceptance of benefits, *id.* ¶ 105, are not the standard (at least not without a factual allegation that Warner's "ratification" was a required part of the process leading to the event). Plaintiff has fallen short both with respect to Warner's "legal right" to stop Musk/Tesla and its "practical ability" to do so.

Moreover, Warner is correct that *Fonovisa* is at the very least distinguishable, and Plaintiff extends no effort to argue otherwise. There, the swap meet-operator "retain[ed] the right to exclude any vendor for any reason, at any time, and thus [could] exclude vendors for patent and trademark infringement." *Fonovisa*, 76 F.3d at 261; *see also id.* at 262 ("According to the complaint, Cherry Auction had the right to terminate vendors for any reason whatsoever and through that right had the ability to control the activities of vendors on the premises."). There is no equivalent allegation here.

Finally, if the line in Plaintiff's Opposition to Warner's motion that summarily asserts that Warner "was actively involved in trying to clear BR2049 and wrangling

Musk and Tesla," Docket No. 54, at 14:7-9, or the statement that Warner "was paying close attention to [Musk], and did not want to upset him," *id.* at 14:9-10, are attempts to satisfy the control/supervision requirement – the Court cannot conceive how they would be attempts to satisfy the direct financial benefit requirement – they fall short because Plaintiff has not remotely supported the proposition that a third party's attempt to clear rights or an avoidance of "upset" demonstrates a right to supervise or control an alleged first-party infringer's later act of infringement once that clearance attempt has failed (especially without any forewarning of such an upcoming infringement[20]).

Plaintiff appears to fall short with respect to this required element of its vicarious infringement claim against Warner, and it has not offered even a suggestion as to how it might amend in a relevant respect. This deficiency by itself is sufficient for the Court to dismiss this claim against Warner, and such dismissal likely would be without leave to amend.

Nevertheless, the Court will continue on to discuss the other required element of the claim as to Warner as well.

b. Direct Financial Interest/Benefit

Like Tesla and Musk, Warner also challenges Plaintiff's attempt to make out a "direct financial benefit" allegation. Also like those defendants, Warner relies – insofar as published, precedential, Ninth Circuit decisions are concerned – only on *Erickson Productions*.

Warner specifically addresses Plaintiff's allegations that Musk and Tesla believed that they were going to get to use a Hollywood motion picture at no extra charge, and that this was a "draw" to Musk and Tesla for the money they paid Warner for the event. Warner provides reasons why this allegation does not identify a direct benefit, but a reason not given is more persuasive – and conclusive – to the Court on this point. The alleged infringement *had not even occurred* at the time Warner and Tesla were

[20] Though Plaintiff alleges, on information and belief, that Warner's "shared services licensing clearance department was at least being shown image options, including viewing the proposed Exhibit C/Presentation Slide 2 Image in advance of the event, and thus knew about the infringement," FAC ¶ 162, this information and belief allegation is not itself connected to, or supported by, factual information that makes the contention plausible, meaning that it is not the type of information and belief allegation that the Court must credit as true here. The same is true of the allegation in paragraph 163 of the FAC that it was Warner that convinced or encouraged Tesla and/or Musk that Plaintiff's non-cooperation "could be circumvented by generation and use of an AI-generated copy of iconic BR2049 imagery." *Id.* ¶ 163.

negotiating arrangements for the "We Robot" event, so how could this financial benefit possibly be a "direct" financial benefit tied to the infringement? Any such "draw" in this respect would be connected to a "direct" benefit *from a promise or suggestion from Warner*, warranted or not, not from the *later* infringement actually allegedly committed during the "We Robot" presentation. There must be a direct financial benefit *from the alleged infringement*. *See Range Road*, 668 F.3d at 1155. There is no direct financial benefit connection with any alleged infringement under this contractual-negotiation/terms "draw" theory.

Warner also addresses the theory that it allegedly had a financial incentive to avoid any claims of breach of contract from Tesla or an adjustment of the Warner-Tesla contract price, giving it reason to "allow" or suggest or encourage Tesla to use the allegedly-infringing work. But, again, this is not a "direct" financial benefit *from the infringement*; it is from Warner's alleged non-action. Moreover, at least where a contract is involved, this theory would effectively collapse the two required elements into one – any failure to exercise any contractual right to control/supervise would automatically amount to a direct financial benefit. Plaintiff has not directed the Court to any case law – precedential or otherwise – that recognizes or allows such a theory. Warner makes exactly this point in its Reply. *See* Docket No. 57, at 6:15-21 (noting that Plaintiff "cites to no cases finding a direct financial benefit under circumstances similar to the convoluted theory alleged in the FAC, i.e., where the alleged vicarious infringer promised to provide a brand affiliation, was unable to, and avoided a claim of breach of contract or adjustment of the contract price based on that failure by 'suggesting, encouraging, or knowingly allowing' the direct infringer to use the allegedly infringing work anyway").

Plaintiff's response to Warner in connection with its vicarious infringement claim (as to both required elements, it appears, *see* Footnote 19, *supra*) is to assert that Warner is simply disregarding the allegations found in paragraphs 85-98 and 139-148 of the FAC and to point to other information that, on its face, has no apparent connection to either recognized required element for such a claim. In that latter regard, Plaintiff asserts that

> [a]t places in the We Robot Recording like 00:47:21-00:47:31, there appears to be an event map visible where an entire section of the event space was turned into "West World," an important motion picture and television franchise centered around robots and artificial intelligence. . . .

> It looks like a brand affiliation where Musk and Tesla seem to be bringing what looks like hundreds of people onto the [Warner] studio lot and pushing Tesla car and robot products at them for hours while the attendees also get to enjoy being at the [Warner] lot and interacting with prominent entertainment brands in the [Warner] conglomerate library.

Docket No. 54, at 13:16-25. Plaintiff offers no explanation for how this demonstrates, or even suggests, a right to supervise or control the alleged act(s) of infringement, or how it would show a direct financial benefit *from that infringement*. Nothing in this passage has anything at all to do with the actual alleged act(s) of infringement, but instead with the "We Robot" event in general.[21]

Moreover, as with its response to Tesla's and Musk's motion in relation to this claim, Plaintiff again entirely avoids mention of *Erickson Productions*. Instead, it simply claims that "[t]he FAC's alleged facts constitute vicarious copyright infringement under all of the cases that the [Warner] Motion cites," *id.* at 14:1-3, without actually explaining how that could possibly be true.

Plaintiff does say in his Opposition that Warner "took a large amount of money from Tesla for an event where Musk expected that as part of the price Tesla was paying, he was going to get at least one specific motion picture property included in his livestreamed car ad, and the one he wanted most of all (but could not have) was BR2049." *Id.* at 14:4-7. But if that is the financial benefit supporting Plaintiff's claim against Warner, it is not a "direct" financial benefit *from the alleged infringement*. It is a direct financial benefit from the alleged fact that Tesla and Warner entered into a contract/agreement. *See* FAC ¶ 85 ("*The contract* necessarily would have required substantial financial compensation to be paid by Tesla to [Warner] . . . .") (emphasis added). If somehow Warner failed to live up to its obligations to Tesla or Musk, that might give them a reason to sue Warner for breach of contract. But an alleged act of copyright infringement by Tesla or Musk *in response to* any such alleged failure by Warner is not what provided Warner the financial benefit it obtained from the relationship, or the event.

As with the other required element, Plaintiff has not identified or even suggested

[21] As Warner states in its Reply, "these alleged circumstances are irrelevant because they still do not close the gaps in what is missing from this claim: that [Warner] had the ability to supervise and control the allegedly infringing activity, or that [Warner] financially benefited directly from the alleged infringement." Docket No. 57, at 7:3-7 (emphasis omitted).

any way in which it might amend to supply what is missing here. As such, the Court will dismiss this claim against Warner, and will likely do so without leave to amend.

D. Lanham Act

The FAC's final claim is for violation of the Lanham Act. Specifically, Plaintiff's Lanham Act claim references 15 U.S.C. § 1125(a)(1)(A). To establish this setting for the claim, the Court quotes what appears to be the pertinent part of that subsection:

> (a) Civil action
>
> (1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--
>
> (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person
>
> . . .
>
> shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 U.S.C. § 1125(a)(1)(A). Plaintiff explains that this claim, in this case, is a "[f]alse association" claim, which it asserts is "essentially synonymous with false designation of origin claims." Docket No. 52, at 18:15-26; Docket No. 54, at 14:20-21.[22]

The defendants all advance numerous reasons why they believe Plaintiff is either inappropriately attempting to rely upon the Lanham Act here, or why such a claim must fail.[23] The Court does not feel the need to address all of those arguments here.

Under the statute Plaintiff cites, the Court presumably first has to identify the "word," "term," "name," "symbol," "device," "false designation of origin," "false or

[22] The Court has not been able to locate any published Ninth Circuit or Supreme Court decisions defining the elements of a "false association" claim pursuant to Section 1125(a)(1)(A). If Plaintiff is correct in its opening assertion(s), and such a claim is "synonymous with" false designation of origin claims, that latter claim does have recognized elements: (1) the defendant's use of a designation – any word, term, name, device, or any combination thereof – or false designation of origin; (2) in interstate commerce; (3) in connection with goods or services; (4) that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of defendant with another person, or as to the origin, sponsorship, or approval of defendant's goods, services, or commercial activities by another person; and (5) the plaintiff has been or is likely to be damaged by these acts. *See, e.g., JUUL Labs, Inc. v. Chou*, 557 F.Supp.3d 1041, 1053 (C.D. Cal. 2021).

[23] With one minor exception, the arguments as to this claim are the same in both motions. As such, the Court elects to discuss the claim collectively.

misleading description of fact," or "false or misleading representation of fact" that is at issue here. In terms of *words* Musk uttered, the only one relevant here is his use of the word "Blade Runner." As noted earlier, however, Plaintiff has alleged it has rights in BR2049, not the *original* "Blade Runner" film. At the same time, however, section 1125(a) liability can extend to where a defendant uses "the same *or similar* mark." *Murray v. Cable Nat'l Broad. Co.*, 86 F.3d 858, 860 (9th Cir. 1996) (emphasis added). It is therefore not entirely clear that an observation about Plaintiff's limited rights is a dispositive one.

Another point to note here, however, is that Tesla and Musk are looking to sell *cars*. Plaintiff is plainly not in that line of business. Yet, Section 1125 is concerned about the source of tangible goods sold in the marketplace. *See Slep-Tone Entm't Corp. v. Wired for Sound Karaoke & DJ Servs., LLC*, 845 F.3d 1246, 1249-50 (9th Cir. 2017); *EVIG, LLC v. Natures Nutra Co.*, 685 F.Supp.3d 991, 997 (D. Nev. 2023) (indicating that the focus of a Subsection A claim "is on whether the trade dress (or unregistered mark) causes confusion by leading consumers to think that two products from different sources actually come from the same source"). "If the court determines as a matter of law from the pleadings that *the goods* are unrelated and confusion is unlikely, the complaint should be dismissed." *Murray*, 86 F.3d at 860 (emphasis added). Thus, even if the Court were to conclude that Plaintiff had sufficient rights at stake notwithstanding Musk's use only of the term "Blade Runner," it is unclear how Plaintiff could turn that into a successful Lanham Act claim. Plaintiff's response – at least in one respect – appears to be that a "false association" claim is different in that it may encompass inappropriate suggestions of sponsorship or association. So far as published Ninth Circuit decisions are concerned, however, Plaintiff has directed the Court only to cases involving competitors. *See, e.g., First Brands Corp. v. Fred Meyer, Inc.*, 809 F.2d 1378 (9th Cir. 1987); *Lindy Pen Co., Inc. v. Bic Pen Corp.*, 725 F.2d 1240 (9th Cir. 1984).

But even if the Court were to conclude that Plaintiff had a sufficient-to-survive argument on *that* point, with respect to the use of the word/name "Blade Runner," the Court also would agree with the Defendants that Plaintiff cannot succeed under the test set forth in *Rogers v. Grimaldi*, 875 F.2d 994, 999 (2d Cir. 1989), which continues to apply to Lanham Act claims involving expressive works where the word is not "used as a

mark." *Punchbowl, Inc. v. AJ Press, LLC*, 90 F.4th 1022, 1031 (9th Cir. 2024). Under that test, the use in question must be "either (1) not artistically relevant to the underlying work or (2) explicitly mislead[] consumers as to the source or content of the work." *Dr. Seuss Enters., L.P. v. ComicMix LLC*, 983 F.3d 443, 462 (9th Cir. 2020). As to the second avenue, implicit endorsement/sponsorship is insufficient. *See Brown v. Elec. Arts*, 724 F.3d 1235, 1245 (9th Cir. 2013). Plaintiff plainly cannot make either showing here. The Court's review of the presentation demonstrates that this was an "expressive" promotional presentation where Musk employed "Blade Runner" for an "artistically relevant" purpose,[24] and clearly did not explicitly mislead any consumers as to source or content.[25]

The defendants also complain about what they perceive as a square-peg/round-hole effort on Plaintiff's part, perhaps best-enunciated in the Ninth Circuit's *Slep-Tone* decision. When a claim "is more accurately conceived of as attacking unauthorized copying, *Dastar* [*Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003)] requires us to avoid recognizing a 'species of mutant copyright law' by making such claims cognizable under the Lanham Act." *Slep-Tone*, 845 F.3d at 1250. "If there is any confusion [here], it does not concern the source of the goods, as the Lanham Act requires." *Id.* "Instead, Defendants make allegedly unauthorized use of the *content* of Plaintiff's [film], which *Dastar* precludes as a trademark claim." *Id.*; *see also Shaw v. Lindheim*, 919 F.2d 1353, 1364-65 (9th Cir. 1990) ("Shaw's claim is not consistent with the Lanham Act's purpose of preventing individuals from misleading the public by placing their competitors' work forward as their own . . . . We decline to expand the scope of the Lanham Act to cover cases in which the Federal Copyright Act provides an adequate remedy."). It is difficult to see how these concerns do not apply equally to the situation at hand here.

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[24] In pointing to the movie Blade Runner, Musk was clearly referencing its dystopian depiction of a bleak future in comparison to the prospective utopian one which his product would supposedly usher in.

[25] Though it briefly references it in its Oppositions, Plaintiff does not explain what necessary role *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60 (1983), has, if any, in application of the *Rogers* test to a proposed Lanham Act claim. The Court has not located any published Ninth Circuit opinion or Supreme Court decision that does so either. The Ninth Circuit's discussion of "purely commercial" speech in *Mattel, Inc. v. MCA Records, Inc.*, 296 F.3d 894, 906 (9th Cir. 2002) – cited by Tesla and Musk in their motion, *see* Docket No. 48-1, at 24:27-25:3 – came in the context of an examination of a statutory exemption in the Federal Trademark Dilution Act, a statute that is not at issue in this case.

Plaintiff seemingly attempts to get around the fact that "Blade Runner" is the only possibly-problematic "word" or "name" mentioned in Musk's/Tesla's presentation by also advancing what it characterizes as a "trade dress" claim here. Included within the "word, term, name, symbol, or device, or any combination thereof" covered by Section 1125(a)(1)(A) is a product's "trade dress." *See TrafFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23, 28-29 (2001); *Jason Scott Collection, Inc. v. Trendily Furniture, LLC*, 68 F.4th 1203, 1212 (9th Cir. 2023), *cert. denied*, 144 S.Ct. 550 (2024); *Millenium Labs., Inc. v. Ameritox, Ltd.*, 817 F.3d 1123, 1126 (9th Cir. 2016). This concept "'refers generally to the total image, design, and appearance of a product and may include features such as size, shape, color, color combinations, texture or graphics.'" *Jason Scott*, 68 F.4th at 1212 (quoting *Clicks Billiards, Inc. v. Sixshooters, Inc.*, 251 F.3d 1252, 1257 (9th Cir. 2001)). "To obtain a judgment for trade dress infringement, a plaintiff must prove: '(1) that its claimed trade dress is nonfunctional; (2) that its claimed dress serves a source-identifying role either because it is inherently distinctive or has acquired secondary meaning; and (3) that the defendant's product or service creates a likelihood of consumer confusion.'" *Id.* (quoting *Clicks Billiards*, 251 F.3d at 1257); *see also Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 210 (2000). "Nonfunctional" means "that the product feature is not 'essential to the use or purpose of the article' or so long as 'exclusive use of the feature would [not] put competitors at a significant, non-reputation-related disadvantage.'" *Jason Scott*, 68 F.4th at 1212 (quoting *Clicks Billiards*, 251 F.3d at 1258). Elements of alleged trade dress "'must be clearly listed and described.'" *Id.* (quoting 1 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 8:3 (5th ed. 2022)).

Plaintiff does not appear to have directed the Court to any authority supporting the view that the content of a film may be understood as "trade dress,"[26] *see* 1 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 8:4.50 (4th ed. 2015), nor explained how the "nonfunctional" concept would be applied thereto or how the elements of its purported trade dress could be listed with any definiteness in connection with a continuously-moving multi-hour product. To this Court's mind, this only reemphasizes

[26] Indeed, by the Court's count, Plaintiff's two Opposition briefs only use the term "trade dress" eight times in total.

that the proper conclusion here is that Plaintiff is attempting to wedge a copyright claim "foot" into a Lanham Act "shoe," but the resulting blisters are too many and too serious for a comfortable fit.[27] *See, e.g.*, *LaChapelle v. Fenty*, 812 F.Supp.2d 434, 443, 448 (S.D.N.Y. 2011); *RDF Media Ltd. v. Fox Broad. Co.*, 372 F.Supp.2d 556, 562-65 (C.D. Cal. 2005).

Though Plaintiff also alleges that the character "K" is protected by trade dress, it has not given the Court any principled guidance for how the depiction (in contrast with the *name*, *see* 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 10:20, at 10-58 (4th ed. 2015)) of a character in a film can be protected by *both* the Copyright Act and the Lanham Act (via its coverage of trade dress), or where the dividing-line would lie. The Court is not aware of any published federal appellate decisions supporting such coverage by the Lanham Act. *See* 1 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 8:4.50 (4th ed. 2015); 5 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 27:89 n.3, at 27-250 (4th ed. 2015). *But see Roblox Corp. v. WowWee Grp. Ltd.*, 660 F.Supp.3d 880, 892 (N.D. Cal. 2023) (finding sufficient trade dress allegations concerning character); *see also Fleischer Studios, Inc. v. A.V.E.L.A.*, 772 F.Supp.2d 1155, 1168 n.23 (C.D. Cal. 2009).

With respect to the Lanham Act claim, Warner adds the argument that Plaintiff has not identified any possible infringing act *by Warner*. Instead, Plaintiff only conclusorily alleges that Warner aided and abetted Tesla's and Musk's alleged violations. Plaintiff's response to Warner's motion focuses on the arguments contained in Tesla's and Musk's motion (and adopted by Warner). It offers nothing in response to Warner's additional contention about the lack of connection between Warner and any alleged Lanham Act violation. The claim against Warner therefore must be dismissed for this additional reason.

For the foregoing reasons, the Court will dismiss Plaintiff's Lanham Act claim. In response to Defendants' motions, Plaintiff has not convinced the Court that it has any viable Lanham Act claim based on the allegations in the FAC. Plaintiff has not suggested

[27] The Court is cognizant that certain filmmakers (*e.g.* Wes Anderson, Jean Pierre Jeunet) and particular films (*e.g. Eraserhead*, Tim Burton's *Alice in Wonderland*) have a visual aesthetic which is highly striking, unique and recognizable. However, usually another filmmaker who attempts to adopt/copy that same aesthetic is considered to be paying homage to the original rather than being accused of misleading the public as to the source of the work.

a way in which it can amend its Lanham Act claim to overcome the foregoing analysis. Nor can the Court possibly envision any such way. As such, the dismissal of this claim is likely to be without leave to amend.

E. Conclusion

The Court will deny Tesla's and Musk's motion with respect to Plaintiff's first cause of action, but will grant Warner's motion with respect to that claim. The Court will grant both motions with respect to Plaintiff's second cause of action. The Court will deny Tesla's and Musk's motion with respect to Plaintiff's third cause of action (Warner's motion did not address that claim). The Court will grant both motions with respect to Plaintiff's fourth cause of action. To the extent the Court will grant one or both motions, it is unlikely that the Court will do so with leave to amend and, with respect to the Lanham Act claim, the claim will almost certainly be dismissed with prejudice.[28] None of the ways in which Plaintiff has suggested it might add to the FAC would appear to make any difference at all to the flaws identified herein, meaning such amendment(s) would be futile.

The Court will *not*, however, make any of the Copyright Act dismissals *with prejudice* – should Plaintiff later uncover information that supports the viability of such claims, it may seek leave to amend at that point to attempt to "revive" them.

[28] If the Court were inclined to allow or invite any amendment of the FAC in any respect, it would note that it found the Defendants' Rule 8 criticisms very persuasive. Because those problems did not prevent the Defendants from meaningfully arguing the sufficiency of Plaintiff's claims in the FAC, and because other reasons were sufficient for dismissal where dismissal is occurring, the Court saw no need to delay things by issuing a Rule 8-based decision. However, if there was ever to be any future pleading in this case, Plaintiff would have to take those criticisms *very* seriously.

Exhibit 35

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 24-9033-GW-RAOx	Date	April 7, 2025
Title	*Alcon Entertainment, LLC v. Tesla, Inc., et al.,*		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	Sheri Kleeger	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Edward M. Anderson Regina Yeh	Christopher S. Marchese A. Louis Dorny Terry W. Ahearn Kristen McCallion John S. Goetz

PROCEEDINGS: **DEFENDANTS TESLA, INC. AND ELON MUSK'S MOTION TO DISMISS FIRST AMENDED COMPLAINT [48]; and DEFENDANT WARNER BROS. DISCOVERY, INC.'S MOTION TO DISMISS FIRST AMENDED COMPLAINT [49]**

The Court's Tentative Rulings on Defendants' Motions [48, 49], was issued on April 4, 2025 [61]. Oral argument is held. Based on the Tentative Ruling, and for reasons stated on the record, Defendant's Motions are GRANTED with leave to amend.

Court and counsel discuss settlement. The parties will have 21 days from the date of this order to mediate. If settlement is not reached, the Second Amended Complaint will be filed 21 days after the mediation deadline.

: 40

Initials of Preparer JG

Exhibit 36

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALCON ENTERTAINMENT, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TESLA, INC., a Texas Corporation; ELON MUSK, an individual; WARNER BROS. DISCOVERY, INC., a Delaware Corporation;

Defendants.

CASE NO. 2:24-CV-09033-GW-RAO

SECOND AMENDED COMPLAINT FOR:

1) **DIRECT COPYRIGHT INFRINGEMENT [17 U.S.C. § 501]**

2) **VICARIOUS COPYRIGHT INFRINGEMENT [17 U.S.C. § 501]**

3) **CONTRIBUTORY COPYRIGHT INFRINGEMENT [17 U.S.C. § 501]**

4) **FALSE AFFILIATION AND/OR FALSE ENDORSEMENT [15 U.S.C. § 1125(a)(1)(A)]**

DEMAND FOR JURY TRIAL

Plaintiff Alcon Entertainment, LLC ("Plaintiff" or "Alcon"), through its attorneys, hereby alleges its Second Amended Complaint ("SAC") against defendants Tesla, Inc. ("Tesla"), Elon Musk ("Musk"), and Warner Bros. Discovery, Inc. ("WBDI") (collectively, "Defendants" and each separately a "Defendant"):

SUBJECT MATTER JURISDICTION

1. The Court has federal question subject matter jurisdiction per 15 U.S.C. § 1121(a), 28 U.S.C. §§ 1331 and 1338(a) and (b), and on the grounds that this is a civil action arising under the laws of the United States. Plaintiff seeks relief against all Defendants under the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101, *et al.* Plaintiff also seeks relief against Musk and Tesla under the Lanham Act, 15 U.S.C. §§ 1125(a)(1)(A), for conduct by Musk and Tesla in interstate commerce involving goods and services.

NATURE OF THE ACTION

2. WBDI entered into a business relationship with Musk and Tesla for a product reveal event entitled "We Robot," to launch Tesla's new fully autonomous Robotaxi and Optimus humanoid robot products, with the event to take place the evening of October 10, 2024 from the Burbank lot (the "Event"). The Event posed high risk of violating Alcon's exclusive rights on a science fiction motion picture property which Alcon and WBDI's subsidiary, non-party WB Studio Enterprises, Inc. dba Warner Bros. Pictures ("Warner Bros. Pictures"), have a relationship about, but which Warner Bros. Pictures does not own, and which Alcon owns exclusively. The property is the copyrighted motion picture "Blade Runner 2049" ("BR2049") and related elements. Musk and Tesla find the property irresistible. WBDI excluded Alcon from the Event process until six hours before the event was to begin, and handled the situation regarding Alcon's rights improperly. Alcon's rights were predictably violated: Musk and Tesla used Alcon's exclusive property prominently in the Event, over Alcon's denial of permission and strong objections. As a result, Alcon became unwillingly affiliated with Musk and Tesla, which

Alcon wanted to avoid and dislikes. Defendants refuse to remediate unless a court tells them they must. Musk and Tesla are a further threat to repeat the infringing conduct in the future if a court does not say they cannot.

PARTIES

Plaintiff

3. Alcon is an independent motion picture and television production company whose products are distributed worldwide. Alcon is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 10390 Santa Monica Blvd., #250, Los Angeles, California 90025.

4. Alcon produced BR2049 and has produced more than thirty other major motion pictures, including "The Blind Side" (which won the 2009 Academy Award for Best Actress), the "Dolphin Tale" series, the "Sisterhood of the Traveling Pants" series, "Book of Eli," "P.S. I Love You," "My Dog Skip," "Prisoners," and "The Garfield Movie." Alcon also produces television, including the critically acclaimed television series *The Expanse*.

5. Alcon was founded in or about 1997. Since about 1998, Alcon and Warner Bros. Pictures (or predecessor entities to the current Warner Bros. Pictures) have had a close business relationship. Warner Bros. Pictures has been at least the domestic distributor of most of the thirty-plus major motion pictures which Alcon has produced since Alcon's inception, including BR2049.

Defendants

6. Tesla: Tesla is the well-known developer and manufacturer of electric automobiles, and the world's largest automobile company by market capitalization. Musk is its CEO and controlling shareholder. Tesla's brand focuses on autonomous driving capabilities and artificial intelligence.

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7. The specific Tesla employees, contractors or agents tasked with interacting with WBDI and executing for Tesla on the issues involved herein included David Adametz ("Adametz") (a video production marketing executive at Tesla) and Shara Lili ("Lili"), a Manager of Video Content for Tesla (also a video production marketing executive at Tesla).

8. Plaintiff makes the allegations of this paragraph 8 on information and belief, subject to the need for discovery: One or both of Adametz and Lili, and possibly other Tesla employees, were in direct contact with the WBDI executives (or Warner Bros. Pictures executives acting under the direction of WBDI) about the Event issues herein. One or both of Adametz and Lili and possibly other Tesla employees were also in direct or indirect contact with Musk about the same issues.

9. Musk: In addition to owning and operating Tesla, Musk also directly or indirectly owns and operates the social media platform X (formerly Twitter), the rocket and satellite company SpaceX, the neuroscience and cybernetics company Neuralink, and the artificial intelligence software development company X.AI Corp. ("X.AI"), among other ventures. X.AI runs "Grok," described as "a free AI assistant … [which] offers real-time search, image generation, trend analysis, and more." https://grok.com/. At any given time, largely depending on Tesla's stock price, Musk is the richest man in the world. Musk has become an increasingly vocal, overtly political, highly polarizing figure globally, specifically including U.S. consumers, and especially in Hollywood. Alcon presciently recognized that this was happening and getting worse at the time of the Event.

10. WBDI: WBDI is one of the largest entertainment conglomerates in the world. WBDI is the specific corporate entity within the WBDI conglomerate which actually owns the Warner Bros. Studios lot in Burbank, California, including substantially all real property and improvements thereon, including without

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limitation telecommunications infrastructure and systems over which the Event presentation and its livestream were transmitted.

Relevant Non-Parties

11. Warner Bros. Pictures: Warner Bros. Pictures is currently a subsidiary of WBDI. Warner Bros. Pictures (or predecessor entities thereto) has been one of the recognized "major" Hollywood motion picture studios for over a century. Warner Bros. Pictures became a WBDI subsidiary when WBDI was formed in or about April 2022, as part of a corporate spin-off and merger transaction between Warner Bros. Pictures' prior parent company AT&T Inc. and the reality television conglomerate Discovery, Inc.

12. Warner Bros. Pictures and WBDI use "shared services" departments and they did so for the Event. Shared services departments are common among Hollywood studios. Shared services departments have personnel (often legal, financial, accounting, or human resources professionals) who may be ostensibly employed by, receive their paychecks from, and have titles only with, a single corporate entity in the larger conglomerate, but who in fact render services upon request or direction to a range of entities within the conglomerate.

13. WBDI and Warner Bros. Pictures Shared Services Licensing Executive Heath: WBDI directed that the matters at issue herein with respect to Tesla and Alcon be handled at least in part by shared services licensing executive Julie Heath ("Heath"). Heath is based in Burbank, California. Heath has been a studio contact and liaison for Alcon on motion picture licensing matters for many years, long before the 2022 creation of WBDI or the 2024 Event.

14. Heath told Alcon that she works for both Warner Bros. Pictures and WBDI. Heath's communications to the outside world generally, and to Alcon specifically, ostensibly reflect her to be a WBDI representative, and that is consistent with how motion picture studios use shared services personnel. For

instance, Heath's email address is a "wbd.com" address, reflecting the WBDI entity as opposed to the Warner Bros. Pictures entity, and the signature block on Heath's emails lists her company as WBDI and not as Warner Bros. Pictures, with the WBDI corporate logo, and not any logo of Warner Bros. Pictures.

15. In any event, Heath renders licensing and clearance services to WBDI, or on WBDI's behalf or at its direction (all as opposed to on behalf of, or only on behalf of, or at the direction of, or only at the direction of, Warner Bros. Pictures). Heath stated to Alcon's legal department that she was doing so (acting for WBDI) in connection with Heath's communications with Alcon and others about the communications alleged herein, and Alcon alleges that in fact she was.

16. SPE: Sony Pictures Entertainment Inc. ("SPE") is another recognized major Hollywood motion picture and television studio and Alcon's international distribution partner for BR2049. SPE had no involvement in the Event or the issues herein, except that SPE did address and deny an emergency Exhibit A international territory "clip license" request from WBDI and Tesla, as described further below. (There is no contention by Alcon that SPE engaged in any improper conduct; rather, SPE was properly protective of Alcon's rights.)

PERSONAL JURISDICTION OVER DEFENDANTS

17. Per Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure, this Court has personal jurisdiction over any defendant who is subject to the jurisdiction of any California court of general jurisdiction. California's long arm statute, *Cal. Code Civ. Pro.* § 410.10, allows courts in the state to exercise personal jurisdiction over parties to the full extent permissible under the United States Constitution. Personal jurisdiction over the Defendants here is thus proper if it comports with due process. It does, including for the following reasons.

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Personal Jurisdiction Over Tesla

18. General Personal Jurisdiction: The Court has general or unlimited personal jurisdiction over Tesla. Tesla is currently incorporated under the laws of the State of Texas and its principal corporate office or headquarters is in Austin, Texas and has been since about December 2021. However, California was Tesla's original principal corporate office home state, from Tesla's inception in about 2003 until the December 2021 move to Texas. Tesla still maintains continuous and systematic contacts with California, including continuing to operate at least two major manufacturing plants in the state.

19. Specific Personal Jurisdiction: Additionally and/or in the alternative, the Court has specific or limited personal jurisdiction over Tesla. Alcon's claims arise out of Tesla's purposeful availment of the rights, privileges, and protections of doing business in California, and also arise out of Tesla's commission of tortious activity in California and purposeful direction of tortious conduct toward the forum state. Tesla committed the acts of infringement alleged herein, or substantial portions of them, in preparation for and during the course of the Event at WBDI's Burbank, California studio lot. The Event was personally conducted by Musk who is Tesla's founder, principal and Chief Executive Officer. Tesla's acts of copyright infringement and violations of the Lanham Act all constituted torts directed toward Alcon, a forum resident, and relate to the motion picture industry, which is of compelling interest to the forum state. Exercise of personal jurisdiction over Tesla also is reasonable and fair.

Personal Jurisdiction Over Musk

20. The Court has at least specific or limited personal jurisdiction over Musk as an individual. Plaintiff's claims against Musk arise out of his acts of purposeful availment of the benefits and privileges of conducting activities in California, including where he personally conducted the Event from the WBDI lot

in Burbank, California. Plaintiff's claims also arise out of Musk's commission of tortious acts while physically present in the forum state. His acts also constituted purposeful direction of tortious conduct to the forum, all for the same specific facts and reasons as described above regarding Tesla personal jurisdiction. Exercise of personal jurisdiction over Musk as an individual also is reasonable and fair. Musk has ample personal resources to defend himself in California court.

Personal Jurisdiction Over WBDI

21. The Court has general or unlimited personal jurisdiction over WBDI. WBDI is incorporated under the laws of the State of Delaware and its principal corporate office or headquarters is in New York. However, WBDI has continuous and systematic contacts with California, including owning and operating one of Hollywood's oldest major motion picture and television lots: the Warner Bros. Studios lot which is located in Burbank, California.

22. Additionally and/or in the alternative, the Court has specific or limited personal jurisdiction over WBDI. Alcon's claims arise out of WBDI's purposeful availment of the rights, privileges, and protections of doing business in California. They also arise out of WBDI's commission of tortious activity in California and purposeful direction of tortious conduct toward the forum state. WBDI's involvement in acts of copyright infringement constituted torts directed toward Alcon, a forum resident. They relate to the motion picture industry, an industry in which the forum state has a compelling interest. Exercise of personal jurisdiction over WBDI also is reasonable and fair.

VENUE

28 U.S.C. § 1391(b)(2) Venue as to all Defendants

23. Venue is proper as to all Defendants pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to Alcon's claims occurred, or a substantial part of the property that is the subject of

the action is situated, within this judicial district. The infringed property in question includes Alcon's copyright in BR2049 and ownership of BR2049-related marks and goodwill, which property is all located within this district for venue purposes, where Alcon has its corporate headquarters in Los Angeles, California.

Additional Venue Bases

24. Venue also is proper as to WBDI and Tesla pursuant to 28 U.S.C. §§ 1400(a) and 1391(d). For venue purposes, Tesla and WBDI each reside in or may be found within this district. Tesla and WBDI each have continuous and systematic contacts with the forum state and this district specifically, including sufficient contacts with this district to establish personal jurisdiction in this district, if this district were treated as a separate state.

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25. **Note on the SAC's Information and Belief Pleading and Alternative Theory Pleading Conventions:** Plaintiff had virtually no involvement in the Event or its processes. Plaintiff has not yet had discovery. Plaintiff thus must plead some relevant facts on information and belief, subject to need for discovery. Some information and belief subjects have multiple plausible possibilities as to what happened, based on Plaintiff's information to date. Plaintiff thus makes some information and belief allegations under alternative theories. The SAC adopts the following presentation convention: The alternative theory which Plaintiff presently believes is the most likely alternative theory is labeled as "**[Name of Factual Issue] Alternative Theory 1**" and set forth in plain (non-italics) type. Secondary alternative theories on the same factual issue are labeled accordingly and then set forth in italics: *"**[Name of Factual Issue] Alternative Theory 2:** [Facts of alternative theory 2]."*

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FACTS

Alcon Owns BR2049 and Related Elements Exclusively and Also Owns Some Rights in the 1982 Picture

26. Alcon and Warner Bros. Pictures have a relationship that involves both the science fiction motion picture "Blade Runner," released in 1982 starring Harrison Ford ("1982 Picture"), BR2049, released in 2017 starring Ryan Gosling, and related elements. However, except for shared non-exclusive ownership rights in the unregistered word mark "BLADE RUNNER," they each own their respective rights exclusively. Alcon produced BR2049 and is the ultimate copyright owner of that work. Alcon also owns the exclusive right to make most types of derivative works of the 1982 Picture.

Musk Was a Known High Risk to Disregard Intellectual Property Rights and Established Licensing Norms, Especially in the Marketing Context

27. Musk's disdain for intellectual property law is no secret, and it was not in the latter half of 2024, nor is it now. For instance, in a moment that received significant press coverage, on or about April 11, 2025, Jack Dorsey, the founder of Twitter (bought by Musk and renamed X), made a social media post advocating to "delete all IP law." Musk publicly endorsed Dorsey's anti-IP law post, responding to it with "I agree." As one journalist reported, Musk's endorsement of the Jack Dorsey post "drew scorn from the intellectual property community and was followed by posts from U.S. Patent and Trademark Office acting Director Coke Morgan Stewart extolling the virtues of trademark, patent and copyright protections."[1]

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[1] Theresa Schliep, "Musk Supports Deleting IP Law, Attorneys Say Let's Not," *Law360*, Portolio Media, Inc., April 14, 2025, https://www.law360.com/articles/2325003/print?section=ip.

28. This incident occurred after the Event and filing of this action, but it is consistent with, and indicative of, numerous public expressions by Musk for many years that Musk does not believe IP law should exist or be enforced. Musk believes that IP law (patent law most specifically) is "for the weak" and restrains business and creative innovation, which Musk believes should be conducted on a kind of survival-of-the-fittest basis.[2] With respect to copyright law, for example, as recently as 2022, Musk said that copyright law "goes absurdly far beyond protecting the original creator" and some protective aspects of copyright law are a "plague on humanity."[3]

29. Musk also has an affinity and exceptional talent for non-traditional marketing. He is a recognized master of communicating in memes, and he highly values them. "Who controls the memes controls the universe," is a Musk tweet from 2020, for example.[4] Musk manifests this by leveraging his larger-than-life presence in the global infosphere to amplify interest in a product or topic with sometimes very short or subtle conduct or commentary. One of the tools Musk consistently uses is creation of unlicensed and often opportunistic public associations with well-known science fiction properties. For instance, Musk

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[2] *See, e.g.*, Nicolas Vega, "Elon Musk says 'patents are for the weak' as he talks Starship rocket, tours SpaceX Starbase with Jay Leno," CNBC.com, September 21, 2022, https://www.cnbc.com/2022/09/21/why -elon-musk-says-patents-are-for-the-weak.html.

[3] *See, e.g.*, Rachel Shin, "Elon Musk called copyright a 'plague on humanity' and now he's being sued for $250 million by music publishers who claim Twitter stole their content," Fortune.com, June 15, 2023, https://fortune.com/2023/06/15/twitter -sued-music-copyright-sony-universal-elon-musk-plague-on-humanity/.

[4] *See, e.g.*, Taylor Lorenz, "Elon Musk: Memelord or Memelifter?", *New York Times*, published May 7, 2021, updated November 8, 2021, https://www.nytimes.com/2021/05/07/style/elon -musk-memes.html?searchResultPosition=3.

named SpaceX rocket models "Falcon" after the Millenium Falcon from the "Star Wars" motion pictures, and named other SpaceX vehicles after spaceships or other elements from the *The Culture* series of science fiction novels by Iain M. Banks.[5]

30. At the same time, Musk is infamous for not paying intellectual property owners for brand affiliation promotional and marketing uses in memes or similar social media material, even for uses where licenses are routinely expected by intellectual property owners and requested and paid for by commercial users other than Musk or his companies.[6]

31. Musk is well known for having applied all of these tendencies and talents to build Tesla into the largest car company in the world by market capitalization with almost no use of traditional paid advertising, in favor of non-traditional, and often arguably infringing, marketing, including strategic or opportunistic branding.

Musk and Tesla Has a Known and Persistent History of Specifically Exploiting Elements of Both the 1982 Picture and BR2049 for Tesla Product Reveals

32. As of the latter half of 2024, Musk and Tesla had a known tendency to make unlicensed associations with both the 1982 Picture and BR2049, and blurring the two works, to support strategic marketing of Tesla products. Musk's and Tesla's marketing playbook includes intentionally selecting product reveal events to take place at locations that naturally tie to one or both of the two motion

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[5] *See, e.g.*, Elizabeth Howell, "Elon Musk's Cybertruck from Tesla Is Straight Out of Blade Runner and James Bond," News, Space.com, November 23, 2019, https://www.space.com/elon -musk-cybertruck-blade-runner-james-bond-inspiration.html.

[6] *Id.* ("[W]hen a brand uses a meme for marketing purposes, it generally asks for permission to share the image, and credits the owner. In many cases, the brand also pays. Mr. Musk, who is both a successful businessman and a freewheeling personal brand, appears to be an exception.")

pictures, and then leveraging the association, including by making unauthorized public performances or displays of copyright-protected elements of one or both works. Until the events at issue here, Musk's literaly copying of copyright protected in this way generally was of elements of the 1982 Picture.

33. In 2019, Musk and Tesla leveraged elements of both the 1982 Picture and BR2049 in this way to market Tesla's cybertruck. (*See* Exhibit H [compilation of 2019 Cybertruck marketing campaign posts and public responses and reactions].) Musk intentionally set the time and location of the cybertruck's reveal event to coincide with a time and location ("Los Angeles November, 2019") strongly associated with the 1982 Picture. (Exhibit H at H-10 and H-11; Exhibit G at G-1.)

34. Musk then employed a series of social media posts, some of them incorporating what Alcon believes to be -- absent Warner Bros. Pictures saying it gave Musk a license -- unauthorized literal copies of copyright-protected elements of the 1982 Picture, to frame the association. (*See, e.g.*, Exhibit H at H-10 and H-11; Exhibit G at G-1 [1982 Picture story card].) Viral response followed. (Exhibit H, *passim*.) Musk stoked the association with the 1982 Picture and BR2049 leading up to and after the reveal event. (*Id.*)

35. In the November 2019 cybertruck reveal event itself, Musk had a specific subjective desire to use BR2049 elements to set the cybertruck reveal event's theme. Through informal discovery processes, Alcon has located witnesses who were personally present during Musk and Tesla's production preparations at the SpaceX facility shortly before the commencement of the November 21, 2019 cybertruck product reveal and its livestream. Alcon expects one or more of these witnesses will be able to testify that, in conduct that does not appear on the livestream recordings of the cybertruck reveal event available online, Musk did all

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of the following during the livestream production preparations for the cybertruck reveal event:

a. Musk repeatedly directed the live and livestream event production teams to make the cybertruck product reveal look and feel like, and evoke to the audience, a connection to "Blade Runner" (or "bladerunner" as Musk sometimes spells it). From context, Musk meant both the 1982 Picture and BR2049.

b. As part of encouraging and demonstrating to the production team what Musk wanted, Musk put on a trench coat or duster and vamped to the production team, pretending to be a "blade runner" (or, as Musk sometimes incorrectly puts it "the Bladerunner").

c. Musk also encouraged his girlfriend at the time (Claire Boucher aka Grimes, who was physically present) to dress in costume reminiscent of BR2049's Joi character. Musk said he specifically wanted Grimes to do so to set the theme of the event. She did. On livestream recordings of the cybertruck reveal event, Grimes can be seen opening the cybertruck product reveal costumed as a female toy-doll or toy-hologram type cyberpunk character reminiscent of Joi. So costumed, Grimes then introduces Musk as her "creator." Compare:

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"Joi" Character in BR2049 at Runtime 0:43:57-0:44:03	Grimes in 2019 Cybertruck Product Reveal[7]

d. Musk openly commented to the production team to the effect that he wanted Grimes do this intentionally to evoke a feel of and goodwill of "Blade Runner." Because Musk and Grimes were talking about the Joi character, who appears in BR2049 and not in the 1982 Picture, Musk necessarily meant to be referencing BR2049.

e. The frequency and intensity of Musk's references to the 1982 Picture and BR2049 in the November 2019 cybertruck product reveal production planning meetings came across as obsessive; Musk

[7] Video of Grimes dressed reminiscently of a dancing hologram version of Joi in BR2049 to open the 2019 cybertruck reveal can be found online many places, including here: https://www.youtube.com/watch?v=zfJBm7VTNKE .

behaved as if the importance of evoking a look and feel of the one or both the two motion pictures in the cybertruck reveal was material to his strategy for the event, not merely incidental or optional.

36. Musk was successful in associating the cybertruck in the reveal event with not only the 1982 Picture, but specifically BR2049: press stories headlined the cybertruck reveal's association with "Blade Runner," with the body of the stories showing that the understood association included BR2049. (*See, e.g.*, Exhibit H at H-22 to H-24.)

37. Musk still fans and exploits the association to the present: in a sales promotion for Tesla products with President Trump in front of the White House in March 2025, Musk framed the cybertruck to the watching press corps as being Musk's answer to his own internal question "what kind of truck would Blade Runner [*sic*, "a blade runner"] drive?"[8]

38. In the White House marketing event, part of the context of why Musk says that he sees the cybertruck as the kind of a truck "blade runner" would drive relates to the cybertruck's steel grey design as an armored, bulletproof vehicle. This sense that the reason a "blade runner" would drive the cybertruck is partly because the cybertruck is a steel-armored, combat-ready vehicle has been a specific focal point of Musk's marketing of the cybertruck since at least late 2023. (*See, e.g.*, Exhibit I [compilation of materials showing persistence of Cybertruck-marketing association with both the 1982 Picture and BR2049 years after the 2019 cybertruck product reveal event] at I-1.) As between the 1982 Picture's Deckard and BR2049's K, the sense that one of these two blade runners would be driving such a vehicle only really fits K: in the 1982 Picture, Deckard drives a car called

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[8] *See, e.g.*, "President Trump promotes struggling Tesla as Elon Watches," news.com.au, March 11, 2025, YouTube https://www.youtube.com/watch?v=uGdd5JmNrFU at 4:42-4:46.

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the "56 Sedan," which is the futuristic equivalent of a used car that looks dark purple on screen in the movie (and is actually bright orange) and Deckard never takes the car into combat; in BR2049, K's car is steel grey, armed and armored, and K takes it into combat at least twice in BR2049's story.

39. Musk's persistent associations of Tesla and its products with elements of both the 1982 Picture and BR2049 have been effective to move some consumers to purchase Tesla products, including the cybertruck. For instance, *see* Exhibit I at I-31 (November 1, 2023 X post by a member of the public stating "I'm 55, The Blade Runner movie did influenced me a bit in placing an order for the Cybertruck LOL (I must admit, maybe Mad Max too LOL)").

40. Neither Musk nor Tesla has ever sought any permissions from Alcon for any of the above conduct. Neither Musk nor Tesla ever paid Alcon for any of it, either. Tesla thereby effectively achieved, and still enjoys, an unlicensed affiliation between the cybertruck and BR2049 and its elements. (Exhibit H, *passim*; Exhibit I, *passim*.)

Alcon Has an Established Business Licensing Automobile Brand Affiliations with BR2049 and K, and WBDI Knew This or Should Have

41. For the nature and scope of Musk's and Tesla's marketing association of the cybertruck with BR2049 and K, Alcon would have required, and brands would have contracted to pay, substantial amounts to Alcon, or for Alcon's benefit, possibly reaching into the tens of millions of dollars, if Alcon would have been willing to license the association at all (which Alcon would not have been willing to do with Musk or Tesla).

42. Brand associations between major automakers and popular Hollywood motion picture properties are recognized commercially as being both highly valuable and as requiring a license or permission from the relevant rights holder in

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the motion picture property used.[9] Automakers have tried to do it without permission from, or any payment to, the motion picture creators in the past, but the judiciary has quickly shut that down. *See, e.g., Metro-Goldwyn-Mayer, Inc. v. American Honda Motor Co., Inc.*, 900 F.Supp. 1287 (C.D. Cal. 1995) (granting an injunction against Honda and its ad agency for evoking MGM's James Bond motion pictures in television advertisements for the then-new Honda Del Sol).

43. Responsible car makers and ad agencies ask permission from studios, or other rights holders, first, and, if permission is granted, negotiate and pay meaningful compensation to the relevant motion picture property rights holders. The dollar value, or other quantified value, of a deal often is determined largely by the number of seconds of direct on-screen association between such things as a specific car or character which appears in the motion picture and the automobile brand paying for the license. Differences of even a few seconds of such on-screen association might be intensely negotiated for weeks or even months, along with such issues as how many seconds must be consecutive (versus broken up) on screen.

44. During Alcon's 2016-2017 production of BR2049, there was a bidding process among numerous major automakers worldwide for the right to associate their respective brands with BR2049, K, and K's spinner. BR2049 features an automotive brand association as a result, including specifically with K and his spinner. The contract price for that brand association was a $500,000 cash payment from the winning automobile brand to Alcon, plus a $30 million media spend commitment from the automobile maker for a co-promotional marketing campaign for the benefit of BR2049, in exchange for ten (10) non-consecutive

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[9] *See, e.g.*, M. Graser, "Car Commercials Borrow From Movies to Make Their Own Stories," *Variety*, March 31, 2014 https://variety.com/2014/film/features/1201150512 -1201150512/.

seconds of on-screen brand association time, as the time measure in BR2049 for that deliverable element of the deal.

45. Warner Bros. Pictures was involved in the process of seeking and considering automobile brand association partners during BR2049's production, and knows the importance of the market to Alcon, and knew it in the September 2024 to October 2024 time frame relevant herein. WBDI used Warner Bros. Pictures shared services resources to relate to Tesla, Alcon, and others on the issues raised in this action. WBDI thus either knew what Warner Bros. Pictures knew about Alcon's automobile brand affiliation licensing business, or WBDI is chargeable with Warner Bros. Pictures' knowledge in that regard.

46. Alcon is still in the automobile brand affiliation licensing market for BR2049, and derivative works of BR2049 or the 1982 Picture, to the present. As of the latter half of 2024, Alcon was (and currently still is) in production on *Blade Runner 2099*, a BR2049-derived sequel or spin-off television series. As of the September to October 2024 time frame, Alcon was actively engaging with automotive brands for brand partnerships on that television project.

The Event and Musk and Tesla's Desire to Use Alcon's Exclusive Property In It

47. Plaintiff makes the allegations of this paragraph 47 on information and belief, subject to need for discovery: In the latter half of 2024, Musk and Tesla approached WBDI about setting what became the Event on Warner Bros. Pictures' legendary Burbank, California studio lot. A substantial part of Musk and Tesla's subjective purpose in their expression of interest for such a relationship with WBDI was to facilitate repetition and amplification of Tesla's unlicensed association with elements of both the 1982 Picture and BR2049 to promote two new Tesla product lines: the Robotaxi (or cybercab) and Optimus humanoid robots.

48. WBDI is now the legal owner of the Burbank lot, following the 2022 corporate merger that created the conglomerate. In the latter half of 2024, WBDI

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(or one or more WBDI subsidiaries as the nominal contracting party or parties) indeed entered into a business relationship with Musk and Tesla for the Event. Tesla agreed to pay and did pay WBDI a substantial monetary amount for the rights to conduct the Event on WBDI's Burbank lot.[10]

49. Plaintiff makes the allegations in this paragraph 49 on information and belief, subject to need for discovery: Especially considered on an overall basis with all the rights and resources being provided by WBDI to Tesla, and even aggregating all of the monetary payments promised and made by Tesla for all of the rights and resources provided to Tesla by WBDI for the Event, the monetary amount promised and paid by Tesla to WBDI (including all amounts paid by Tesla to WBDI subsidiaries) for the Event was less than what Tesla would have had to pay Alcon for a license to affiliate the Robotaxi with BR2049 and/or K, and still also be able to pay the minimum amount realistically possible for the other resources involved. In other words, the Event was a significant bargain for Musk and Tesla, at least if and to the extent that it enabled or facilitated Musk and Tesla making a brand affiliation between the Robotaxi and BR2049 or K.

50. Neither WBDI nor Tesla made any contact with Alcon about the Event, and Alcon knew nothing about it, until WBDI ultimately contacted Alcon about six hours before the Event's scheduled start, as discussed further below.

51. Plaintiff makes the allegations of paragraphs 51 and 52 on information and belief, subject to need for discovery: As part of the overall Event relationship terms, WBDI allowed Musk and Tesla effectively to review the WBDI conglomerate's intellectual property ("IP") content library, including Warner Bros. Pictures' IP, in order to pick and choose content they wanted for the Event.

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[10] Alcon does not know the precise amount with certainty, but there appears to be no dispute by Defendants that there was a such an agreed and performed payment term, and that the amount qualifies as substantial.

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52. Pursuant to this arrangement, Musk and Tesla requested, and WBDI caused one or more of its subsidiaries, to enter into license agreements for Tesla to use elements of the following valuable IP content from the WBDI conglomerate library in the live (in-person, not livestreamed) portion of the Event: (a) "Westworld"; (b) "Mad Max"; (c) the Batmobile; and (d) the "56 Sedan" from the 1982 Picture. With respect to the Batmobile and the "56 Sedan," the agreement between WBDI (or the relevant WBDI subsidiary) was not just for a license, but for WBDI (or the relevant WBDI subsidiary) physically to provide, or to facilitate the provision from third parties, of the cars themselves to Tesla for the Event.

53. At some point during this shopping-in-the-WBDI-content-store Event preparation process, Tesla told WBDI that it wanted to use the image in Exhibit A, also shown in-line below, for Musk's keynote speech at the Event:

54. Exhibit A is an iconic image from BR2049. It is part of a core sequence in BR2049, additional images from which sequence are in Exhibit B.

55. WBDI knew or should have known that Tesla's request to use the Exhibit A image in Musk's keynote speech for the Event required rights held exclusively by Alcon. WBDI also knew or should have known that Alcon would care very much about the response to any BR2049 use request from Musk or Tesla and that Alcon be allowed to address the request on an fully informed basis.

56. WBDI tasked shared services personnel with handling Tesla's request. As discussed in prior paragraphs, as Alcon's domestic distributor for BR2049, and by virtue of actually being previously involved with Alcon in automobile brand affiliation licensing activities, Warner Bros. Pictures knew that Alcon would consider what Musk and Tesla wanted to do with Exhibit A to be an automobile brand marketing affiliation with BR2049 and its main character K, for which Alcon charges large license fees, if Alcon were willing to allow an affiliation at all. By well-established course of performance and course of dealing, Warner Bros. Pictures is not allowed even to communicate with an automobile brand about BR2049 brand licenses or affiliations without fully informing Alcon first and seeking Alcon's approval.

57. Warner Bros. Pictures also generally has been Alcon's domestic distribution partner on over thirty other major motion pictures over a period spanning more than twenty-five (25) years. Warner Bros. Pictures knows very well that Alcon is careful about product and brand associations: a license which would potentially associate Alcon or its property with a controversial company or person requires that Warner Bros. Pictures consult with Alcon first. By the latter half of 2024, Musk and Tesla qualified as controversial beyond any doubt, even apart from their history of opportunism with the 1982 Picture and BR2049.

58. When WBDI and Warner Bros. Pictures received the Exhibit A use request from Tesla, they clearly should have either communicated a firm "no" to Musk and Tesla, or brought Alcon into the process immediately. Instead, in the terms of the "Tesla-shops-in-the-WBDI-content-store-to-prepare-for-the-Event" analogy suggested above, WBDI did almost the exact opposite. As discussed below, in the terms of the analogy, WBDI did the equivalent of putting the Exhibit A image into Tesla's shopping cart, and then moving Tesla into the checkout line. WBDI did this by pursuing an ill-advised plan that involved either intentionally or

negligently misrepresenting the scope of Warner Bros. Pictures' BR2049 rights to Tesla, which plan crumbled six hours before the scheduled start of the Event.

WBDI's Ill-Advised "Clip License" Plan

59. As part of Alcon's grant to Warner Bros. Pictures of BR2049 domestic distribution rights, Warner Bros. Pictures has some BR2049 "clip licensing" rights, but the rights could never be the basis to grant Tesla a valid license to use Exhibit A in Musk's Event keynote speech. "Clip license" rights (sometimes shortened to "clip rights") are sometimes granted by production companies to their distributors as ancillary rights to the overall distribution rights package. A "clip license" right is generally a right to grant licenses of usually (although not always) small amounts of material from a motion picture or other work (like a single still image from a motion picture) to third parties, for uses that are typically either entirely non-commercial, or at least which will not interfere commercially with other established types of licensing.

60. As of September and October 2024, Alcon and Warner Bros. Pictures had an at least eight (8) year history of dealing with each other on BR2049 licensing issues. In all that time, Warner Bros. Pictures has never had or claimed to have authority to negotiate about a potential licensed affiliation by a major automobile brand with BR2049 or K without getting first getting Alcon's fully informed prior permission and approval. Warner Bros. Pictures has not even claimed the authority to use BR2049 elements without Alcon's permission in just a single paid televised (or livestreamed) advertisement for an automobile brand, without consulting Alcon. Or, if Warner Bros. Pictures ever has done any of that before, Warner Bros. Pictures knows very well that Alcon does not know of it, and that Alcon would be very surprised and unhappy to learn about it.

61. Even if Tesla's requested use were not effectively for an automobile brand affiliation license well beyond anything a "clip license" might ever cover,

and even setting aside Alcon's general approval rights discussed above for controversial affiliations, Tesla plainly needed livestreaming and worldwide rights for the requested use. Warner Bros. Pictures "clip licensing" rights on BR2049 do not include livestream or worldwide uses.

62. Nonetheless, for some unknown period of time, WBDI and Warner Bros. Pictures led Musk and Tesla down a road of expecting to get the Exhibit A image rights for Musk's keynote speech, and without involving Alcon, by WBDI causing Warner Bros. Pictures to work with Tesla to grant Tesla a "clip license" for the use.[11]

63. Plaintiff makes the allegations of this paragraph 63 on information and belief, subject to need for discovery: As part of the "clip licensing" plan, WBDI (or Warner Bros. Pictures shared services personnel acting for WBDI), intended to charge Tesla a specific amount of money for the "clip license." This was money that neither WBDI nor any WBDI entity would have received by an Alcon licensing arrangement with Tesla for an automobile brand affiliation, had Alcon granted one.[12] The amount of money that WBDI was going to charge Tesla for an

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[11] This allegation that WBDI in fact pursued an (improper and ill-advised) "clip license" plan in this way is not speculation by Alcon. Heath told Alcon's legal department that WBDI spent some unknown amount of time pursuing such a "clip license" plan prior to finally contacting Alcon. Heath communicated this to Alcon in telephone calls with Alcon's legal department on October 10, 2024 and October 16, 2024, or in one of the those calls. The telephonic information from Heath in that regard is further supported by partial email chains visible to Alcon. On the day of the Event, as described further below, Heath copied Alcon's legal department into pre-existing email chains showing WBDI-Warner Bros. Pictures shared services personnel (Heath) trying to clear the Exhibit A usage for Tesla without contacting Alcon, and by characterizing the usage (improperly) as only involving "clip licensing" rights.

[12] Brand affiliation licensing money usually goes to the production company (Alcon here), and not to the distributor (Warner Bros. Pictures). In contrast, "clip license" (footnote continued)

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Exhibit A image "clip license" is unknown to Alcon, but likely was on the order of one percent (1%) or less of what Alcon would have charged Tesla for a brand affiliation license, if Alcon had been willing to grant one at all.[13]

64. Plaintiff makes the allegations of this paragraph 64 on information and belief, subject to need for discovery: As part of the "clip license" plan, prior to the day of the Event, and prior to any communication with Alcon, WBDI or its representatives transmitted a high resolution digital file of the Exhibit A image to Tesla, for the purpose of Tesla using it in the Event keynote speech, possibly along with other high resolution files of other BR2049 material (such as other still images from BR2049).[14]

65. Possession of a quality high resolution digital image file was important for what Musk and Tesla wanted to do. It is not hard to find and make unauthorized copies of the Exhibit A image online in relatively low or moderate resolution. However, without a quality high resolution digital image file, the resolution of an unauthorized image captured online could easily be too low for the

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money paid to the distributor goes into the accounting "waterfall" paid out by the distributor to the production company, with the distributor taking out a percentage distribution fee, essentially, on the "clip license" amount received.

[13] Plaintiff pleads this based on general knowledge of amounts usually associated with true clip licenses, and making the assumption that consistent with characterizing the usage as a clip license, Warner Bros. Pictures set the fee accordingly. Clip licenses have such fees in the ordinary course (they are not typically granted for free).

[14] Plaintiff bases the allegations of paragraph 64 above in part on email communications from Heath to SPE made on October 10, 2024, which Heath later copied to Alcon. In those October 10, 2024 emails between WBDI and SPE, WBDI (Heath) tells SPE in essence, *inter alia*, that SPE does not need to provide Tesla with a high resolution digital file of the Exhibit A image, because "[t]hey [Tesla] already have the image (it is an approved still)." From this, Alcon reasonably infers that Tesla already had it, specifically because WBDI transmitted it to Tesla.

high resolution presentation of the image that Musk and Tesla wanted for the Event, including the very large screen size that was actually displayed by all Defendants to the individuals attending the Event in person.

66. WBDI's choice to spend time on the "clip license" plan rather than immediately informing Alcon of Musk and Tesla's specific expression of interest in using protected elements of BR2049 for the Event, especially combined with WBDI's overall (independently valid but risky) decision to exclude Alcon from Event planning and preparations virtually entirely, caused Alcon reasonably foreseeable prejudice by itself.

67. Specifically, WBDI's failure to contact Alcon sooner deprived Alcon of the ability to take its own actions to protect itself in a meaningful time frame before Musk and Tesla's planned use of BR2049 elements in the Event. Actions which Alcon was deprived of taking in any meaningful way included Alcon engaging with Tesla directly about the issue, including so that Alcon could ensure that the BR2049 rights situation as between Alcon and Warner Bros. Pictures was conveyed accurately to Musk and Tesla, and could possibly even have included Alcon seeking an injunction against use of any BR2049 elements or other exclusively owned Alcon property by Musk and Tesla in the Event.

68. WBDI further exacerbated the situation, and further foreseeably prejudiced Alcon, by its next choices.

Consumer Expectations Build for Musk and Tesla to Use BR2049 to Set the Theme of the Event Despite Alcon Still Being Excluded from the Process

69. At some unknown point in time after the Event had been announced to the public, but before the Event itself, and while WBDI was apparently still holding out the "clip license" plan to Tesla, members of the public came to have a specific expectation that Musk was going to use BR2049 to set the theme of the Event. For instance, Exhibit J shows an X post and link to a video by a YouTube journalist

documenting his October 9, 2024 interview of several men planning to attend the Event the next day, as they all sit together at a restaurant following a meal. The journalist asks each of the men what they expect from the Event the next day (October 10, 2024). The journalist's question/answer exchange with one of the men is:

> Q. [What are you expecting?]
> A. Tomorrow, I'm expecting, so Blade Runner 2049 – 2049? Is that how you –
> Other Man Sitting Next to Answering Man: Yes.
> Q. Is that a movie?
> A. It is a movie and it's from Warner Brothers. Warner Brothers, we are going to Warner Brothers Studio, so I'm expecting, like Warner Brothers, like, backdrop and theme of Blade Runner [*sic*] with a cy… with a Robotaxi, which is inspired by the Blade Runner [*sic*] vehicle to show up, so we're going to get that theme of the future.

Exhibit J, https://www.youtube.com/watch?v=KyBFlYFIXcg .

70. Plaintiff makes the allegations of this paragraph 70 on information and belief, subject to the need for discovery: Musk knows his audience very well, and is attuned to them. He was aware, and possibly even helped generate, the buzz building as the day of the Event neared that Musk was specifically going to use BR2049 to set the Event's theme. Musk wants to give his audience what they want and expect in a product reveal. The fact that WBDI was leading Musk and Tesla down a road of believing that the Exhibit A usage had been licensed by Warner Bros. Pictures, or would be, exacerbated and inflamed Musk's desire and determination to use BR2049 elements to set the theme of the Event. It contributed to Musk's and Tesla's ultimate decision not to take an alternative course than the one they in fact chose after the "clip license" plan ultimately collapsed.

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WBDI Reverses Itself and Tells Musk and Tesla That the "Clip License" Plan Will Not Work Because Tesla Needs International Rights Definitely Not Held by Any WBDI Entity

71. At some point near the day of the Event (maybe the morning of, or maybe a few days prior), WBDI abruptly changed course on Musk and Tesla about the Exhibit A image. In the "Tesla-shops-in-the-WBDI-content-store-to-prepare-for-the-Event" analogy terms, WBDI content store security stopped Tesla from leaving the content store with the BR2049 Exhibit A image use license in Tesla's shopping cart, so that WBDI store security could check Tesla's cart, as it were.

72. Specifically, WBDI's shared services licensing department told Tesla that Warner Bros. Pictures was now -- very close to the scheduled start of the Event -- not going to be able to license the Exhibit A image to Tesla for Musk's keynote speech as planned. The reason WBDI gave for the reversal was that WBDI had only just realized that Tesla was going to need international rights, and that Warner Bros. Pictures did not have sufficient BR2049 international rights by itself to grant an Exhibit A image license to Tesla for the required worldwide use.[15] (WBDI apparently communicated this without telling Tesla about the other shortcomings discussed above as to Warner Bros. Pictures' BR2049 rights.)

73. Things might have simply ended there, but they did not. On the morning of the Event, an unidentified person in senior management at WBDI (*i.e.*, an individual in WBDI's senior management whose identity is not yet known to Alcon) made a direct or indirect communication to the individual WBDI shared services licensing executive (Heath) who had made the determination that the "clip license" plan was not legally viable. The essence of the message from this

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[15] Heath disclosed this in essence to Alcon's legal department in telephone calls with Alcon's legal department on October 10, 2024 and October 16, 2024, or in one of those calls.

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unidentified WBDI senior management person to Heath was a direction to Heath that she should help Tesla fix the Exhibit A image licensing problem so that Musk could use Exhibit A in his keynote speech as planned.[16]

74. Not long after this communication from WBDI senior management to Heath, and shortly after noon on the day of the Event, Heath provided what she believed to be the relevant SPE licensing department contact information to Tesla, and Heath and Tesla proceeded to each separately make coordinated contact with Alcon's international distribution partner, non-party SPE. The purpose of both of the separate but coordinated contacts by Heath and Tesla to SPE was to try to get international "clip license" rights for Tesla to the Exhibit A image, and without telling Alcon.

75. First, Heath provided her SPE clip licensing counterpart's direct email address to Tesla representatives so that Tesla could make direct contact with SPE. Second, at 12:11p.m. PDT on October 10, 2024 (about seven hours before the scheduled 7:00 p.m. PDT start of the Event) Heath sent an email "heads up" to the SPE executive that the SPE Executive might be getting an emergency rush basis BR2049 rights permission request for "a Tesla even[t] happening today on our lot (sorry)."

76. In the same email to the SPE executive, Heath explained that the "emergency" was the result of her shared services department initially but erroneously treating the contemplated Tesla Exhibit A usage as only for an in-person event, with no livestream, but that Heath's department was then told the usage would involve worldwide livestream. Heath's email further explained that

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[16] Heath told Alcon that the described communication and direction from WBDI senior management to Heath in fact occurred. Heath disclosed the essence of this to Alcon in calls with Alcon's legal department on in calls with Alcon's legal department on October 10, 2024 and October 16, 2024 or one of those calls.

the reason for the contact to the SPE executive was a WBDI belief that SPE "controlled international," and thus implicitly that a combination of "clip license" permissions from Warner Bros. Pictures and SPE could provide adequate rights without involving Alcon.

77. SPE promptly responded to WBDI in writing (in an email sent at 12:49 p.m. PDT on October 10, 2024) that the BR2049 international usage rights which Tesla desired were beyond the scope of anything that SPE could grant without Alcon's permission; that Alcon would have to be involved for Tesla to be granted such rights; and that SPE had already told Tesla by phone that SPE did not have sufficient rights to grant the international rights being requested without Alcon involvement.

78. Tesla appears to have flatly refused to contact Alcon. For example, in the same 12:49 p.m. PDT email referenced above, SPE's representative also wrote to WBDI (Heath): "I just spoke to [Tesla representative] David Adametz and he said, they need worldwide rights but is not working with Alcon." Alcon submits that the facts and circumstances, including Musk's and Tesla's known aversion to working with or validating the business model of brand affiliation licensors, and the known facts of how everything actually happened with respect to the Event, including that Tesla never itself contacted Alcon even a single time, all support that the meaning of the reported statement by Tesla's Adametz to SPE after learning that Alcon's permission was required for the international rights requested, was not "Tesla is not working with Alcon so far (or yet)," but rather "Tesla is not willing to work with Alcon at all."

WBDI Contacts Alcon About Six Hours Before The Scheduled Start of the Event, Seeking an Emergency Exhibit A Use License for Tesla

79. At 12:54 p.m. PDT on October 10, 2024, Heath contacted Alcon, by copying Alcon's legal department into the existing chain with SPE, but still trying

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to characterize the usage requested as only involving a "clip license." This was the first contact by anyone at WBDI to anyone at Alcon about the Event: Alcon knew nothing about the Event until this point.

Alcon Informs WBDI and SPE That License Permission is Denied With Additional Directions and Objections and WBDI Balks At Communicating Any of the Message to Tesla, Wanting Only SPE to Do So

80. After requesting more information than WBDI's Heath provided in her initial emergency request to Alcon, and receiving some from Heath, and after considering the situation at Alcon's CEO level, Alcon's representative communicated back in writing to WBDI (Heath) and SPE as follows, at 1:20 p.m. PDT on October 10, 2024: "I checked with one of Alcon's co-heads, and he does NOT approve of any use of 'Blade Runner 2049' in connection with Tesla and/or X. Please confirm that you have received this email and will not be proceeding with the use of our property at this event. Thanks." (Emphasis in original.)

81. WBDI and SPE both communicated that this was received. However, WBDI (Heath) balked at being the channel to communicate any of it back to Tesla. Instead, in an email copying Alcon, Heath asked *SPE* to do so, apparently so that WBDI would not have to itself give Musk and Tesla any bad news.

SPE Communicates the International Rights Licensing Permission Denial to Tesla, But Without Communicating the Full Scope of Alcon's Requested Message to Musk and Tesla

82. In response to Heath's request that SPE do the communicating of the bad news, rather than WBDI doing it, SPE reported back to WBDI and Alcon by email at 1:27 p.m. PDT on October 10, 2024 that SPE had communicated back to Tesla that "[SPE] [c]onfirmed use was not granted and thanked them for their interest."

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83. This reported communication by SPE to Tesla by itself was significantly less than what Alcon asked to be communicated to Musk and Tesla, and, if left to stand by itself, was problematic. If what SPE reported as having been communicated to Tesla were all that were communicated back to Tesla (*i.e.*, if more were not said to Tesla, especially by WBDI), it would be potentially misleading to Musk and Tesla in at least two respects, both of which increased Alcon's reasonably foreseeable prejudice.

84. First, by conveying only that the specific Exhibit A usage request at issue was denied by Alcon, and also conveying a "thank you for your interest," the SPE communication, if left to stand by itself, carried risk of Musk and Tesla not understanding the strength and scope of Alcon's position: that Musk and Tesla not make any use of BR2049 or any other Alcon property for the Event.

85. Second, if the SPE communication were left to stand by itself with no further communications by WBDI to Tesla afterward, the combination of communications by WBDI and SPE to Tesla up to that point potentially created another serious problem: it was susceptible to an inference by Musk and Tesla that the only problem, which WBDI as an organization needed Alcon's or SPE's help to cure, was lack of sufficient international BR2049 rights.

86. Alcon's legal department saw at least some of these potential problems and moved quickly to try to correct them, by trying to make sure that SPE's incomplete communication to Tesla did not stand unsupplemented by more direct and complete information directly from WBDI to Tesla.

87. The Event was not SPE's to say anything about. The larger message was thus not really for SPE to communicate to Tesla, and Alcon did not necessarily expect SPE to communicate it to Tesla. Rather, Alcon reasonably expected WBDI to do so. Alcon's legal department did nonetheless make a telephone call to SPE to note the insufficiency of SPE's communication. However, more relevant here,

when Alcon saw Heath balk at WBDI itself actually telling Musk and Tesla any bad news, and saw that SPE had not communicated the full message that needed to be communicated, Alcon's representative sent WBDI (Heath) an email requesting a phone call as soon as possible. Such a call in fact then occurred.

Alcon's Event Directions to WBDI

88. In the resulting phone call between Alcon's legal department and WBDI's Heath, which took place at around 1:45 p.m. PDT on October 10, 2024 Alcon clearly communicated to Heath all of the following: a) Alcon refused all permissions; b) Alcon was adamantly opposed to Alcon or any Alcon-owned property ever being used by Tesla, Musk, or any Musk-owned company for anything, including because Alcon did not like Musk and was concerned about his increasing political polarity and high brand toxicity; c) Alcon asked and directed WBDI to communicate all of this directly to Musk and Tesla (and specifically not for WBDI to rely only on SPE's Exhibit A international rights denial communication to Tesla); and d) Alcon requested and directed that WBDI also actively police against any Musk and Tesla use of BR2049 or any Alcon property in the Event. (**"Alcon Event Directions to WBDI"**.)

89. Alcon understood WBDI's (Heath's) response to mean that WBDI would honor and execute on all of Alcon's Event Directions to WBDI.

WBDI Apparently Intentionally Ignores
All of the Alcon Event Directions to WBDI

90. What WBDI did or did not do next is still not entirely clear to Alcon. Alcon initially believed that WBDI had followed all of the Alcon Event Directions to WBDI, except that WBDI did not actively police Musk and Tesla against use of BR2049 elements or other Alcon exclusively owned property during the Event.

91. However, it now unfortunately appears more likely that WBDI did not perform <u>any</u> of Alcon's Event Directions to WBDI. Instead, it now appears that

WBDI decided to rely only on SPE's communication to Tesla that international rights to use Exhibit A had been denied, so that WBDI would not itself have to give Musk or Tesla any bad news – a course of action that Alcon had precisely asked WBDI not to do.

92. Thus, as Plaintiff's lead alternative theory on the question of what WBDI did or did not do in response to the Alcon Event Directions to WBDI, Plaintiffs pleads on information and belief, subject to discovery, that the answer is "nothing": although WBDI had caused Alcon reasonably to infer that WBDI would perform all of Alcon's Event Directions to WBDI, WBDI instead made an intentional or negligent choice to perform none of Alcon's Event Directions to WBDI. (**"WBDI Action on Alcon Event Directions to WBDI Alternative Theory 1."**)

93. If that is what happened, then among other problems, it potentially left uncorrected a misimpression that WBDI had instilled in Musk and Tesla that was unreasonably and foreseeably prejudicial to Alcon. First, WBDI at least initially gave Musk and Tesla the false impression that Warner Bros. Pictures had sufficient BR2049 rights to grant Tesla an Exhibit A image use license for Musk's keynote speech without any Alcon knowledge or approval. Later and second, WBDI made an only partial correction to the initial inaccurate representation on the BR2049 rights situation, to the effect that, while there was a deficiency in Warner Bros. BR2049 rights preventing Warner Bros. Pictures from granting Tesla a valid license, the only deficiency was a lack of sufficient international rights.

94. A corollary (but false) understanding that this potentially created in Musk and Tesla was that Alcon's exclusive rights in BR2049's protected elements were only for the non-domestic territory. Under WBDI Response to Alcon Event Directions to WBDI Alternative Theory 1, WBDI never corrected this false impression potentially instilled in Musk and Tesla about the scope of Alcon's

BR2049 rights. Musk and Tesla were thus left by WBDI with the (inaccurate) impression that Alcon did not have the exclusive or blocking rights to BR2049 uses in the domestic territory, including the U.S. The false impression left by WBDI in Musk and Tesla was instead that Alcon had no U.S. rights in BR2049 and instead Warner Bros. Pictures had them all (or enough); that Warner Bros. Pictures was willing to grant such rights to Tesla; and perhaps even already had purportedly granted such domestic territory rights to Tesla for use of Exhibit A.

95. This would significantly (but erroneously) change risk assessments for Musk and Tesla: while they might be exposing themselves to Alcon claims under the law of other jurisdictions if they used BR2049 protected elements in Musk's keynote speech without Alcon's permission, they potentially believed that they were effectively immune from U.S. law-based infringement claims by Alcon. This would have sharply prejudiced Alcon by erasing the deterrent effect on Musk and Tesla of Alcon's exclusive United States copyright rights in BR2049. As part of WBDI Action on Alcon Event Directions to WBDI Alternative Theory 1, Alcon alleges all of this did happen as a consequence of WBDI's intentional (or negligent) decision not to perform any of Alcon's Event Directions to WBDI.

96. ***WBDI Action on Alcon Event Directions to WBDI Alternative Theory 2:*** *WBDI performed all of the Alcon Event Directions to WBDI, except that WBDI intentionally or negligently failed actively to police Musk and Tesla's conduct during the Event. Under this theory, before the Event started, Musk and Tesla had accurate information about Alcon's positions, which information was relayed to Musk and Tesla by or through WBDI, and Musk and Tesla were on clear notice that they would potentially face U.S. law-based claims by Alcon if they chose to use protected elements of BR2049 in the Event.*

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WBDI Fails Actively to Police Musk and Tesla's Conduct During the Event Against Uses of BR2049 Protected Elements or Any Other Alcon Exclusively Owned Property, Contrary to Alcon's Event Directions to WBDI

97. Under both of the above alternative theories, WBDI Action on Alcon Directions to WBDI Alternative Theories 1 and 2, WBDI either intentionally or negligently failed to actively police Musk's and Tesla's conduct during the actual Event against Musk and Tesla uses of protected elements of BR2049 or any other property exclusively owned by Alcon. This failure by WBDI was contrary to what Alcon had requested in the Alcon Event Directions to WBDI, and to what Alcon had reasonably understood WBDI had committed to Alcon to do after WBDI's receipt of the Alcon Event Directions to WBDI.

98. There appears to be no dispute by Defendants that WBDI in fact did not actively police Musk and Tesla's Event conduct against Musk and Tesla uses of BR2049 or any other property exclusively owned by Alcon.

99. Infringement followed.

Musk and Tesla Use an AI Image Generator to Create The Exhibit C Image

100. Several hours later, the Event happened. Musk featured the image attached as Exhibit C, also shown below, prominently in his keynote speech:

101. Musk and Tesla (and/or their agents) created Exhibit C using an artificial-intelligence ("AI")-driven image generator, after communication to Tesla by at least SPE of the Exhibit A licensing denial. Alcon alleges on information and belief, subject to need for discovery, that the AI image creation process involved literal copying of protected elements of BR2049, possibly including literal copying of the Exhibit A image or of the entire BR2049 work. Plaintiff does not know exactly what Musk and Tesla did in their admitted use of an AI image generator to create Exhibit C, and pleads two alternative theories.

a. **Exhibit C AI Generation Process Alternative Theory 1:** From Alcon's examination, Exhibit C seems likely to have been generated by Musk and/or Tesla (or someone acting under their control and/or at their direction): a) copying the Exhibit A image and the Exhibit B images (or similar images from BR2049's Las Vegas sequence), or even possibly the full BR2049 motion picture work (or qualitatively significant portions thereof) in audiovisual form, into an AI image generator, and b) then asking an AI image generation engine to make "an image from the K surveying ruined Las Vegas sequence of 'Blade Runner 2049,'" or some closely equivalent input direction. Alcon alleges that in fact this, or something closely akin to it, is how the Exhibit C image was generated, and for the bad faith intentional purpose of affiliating BR2049 and its goodwill with Tesla's cybercab, over Alcon's denial of permission and express objections.

b. The Exhibit C image was generated in the above way by an employee or agent of Tesla (possibly by Adametz or Lili), or another Musk-owned or -controlled company, or even possibly by Musk himself. It was done with Musk and Tesla's knowledge of the improper nature and purpose of the image generation request. It was done by

individuals subject to the supervision of and under the direction and control of Musk. Musk and Tesla participated in its creation.

c. ***Exhibit C AI Generation Process Alternative Theory 2:*** *The same facts as Exhibit C AI Generation Process Alternative Theory 1, except that part of the image generation process included individuals involved in the image generation process also selecting or otherwise obtaining what Musk and Tesla claim is a "licensed image" as a background and then directing an AI image generator to add "Elon Musk in a duster in the foreground," or "Elon Musk in a duster looking into the city," or similar direction. However, the AI image generator in following the image generation prompts from Musk and/or Tesla (or persons acting under their control and/or direction) still relied on literal copies of BR2049 in its entirety, or of qualitatively significant protected portions of BR2049, to generate the image, and, the BR2049 elements in the image generator were placed into the image generator by Musk and/or Tesla (or persons acting under their control and/or direction).*

Musk Uses the Exhibit C Image in His Keynote Speech to Set the Event's Theme

102. The Event was scheduled to begin at 7:00 p.m. PDT on October 10, 2024, but did not actually begin until about 8:00 p.m. PDT. In a brief introduction of a minute or less, a Tesla representative named "Franz" took the stage. Franz's only substantive remark was the following: "Just want to thank Warner Brothers for hosting us here. As you know, this is the birthplace of many epic films – many of them depicting a vision of the future."

103. Franz then said: "We're here tonight to experience that future, that is closer than you think. And who better than Elon, right, to show us that future." The livestream then shifted to a combination of aerial shots and ground cameras

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showing a cybercab (or Robotaxi – the terms appear to be interchangeable as far as Plaintiff can tell) arriving at an on-lot theater, some distance away from the presentation stage building. Musk emerged from the theater and entered the cybercab after silently waving to a small crowd.

104. The livestream tracked the Musk-bearing cybercab from various camera vantage points as it autonomously rolled him slowly to the presentation stage building at another part of the lot. Musk exited the cybercab and walked onto the Event stage. He spent about another minute on welcoming remarks and explaining that there were 20 cybercabs and another 30 fully autonomous and driverless Tesla Model Ys at the Event for attendees to take a ride in.

105. Then to commence the actual presentation, Musk said: "So you see a lot of sci-fi movies where the future is dark and dismal, where it's not a future you want to be in." As Musk said this, the Event's global livestream feed changed to a full screen display of a presentation slide with an image of the Earth from space at sunrise, with the words "What Kind of World Do We Want to Live In?" This first slide stayed on the full-screen livestream feed for less than two seconds.

106. Then, the livestream full screen display shifted to Musk's second slide, which the livestream displayed for about 11 seconds. The second slide is an image that looks (on a first initial visual read) like a motion picture still photo (although it isn't) of a male figure seen from behind, with close-cropped hair, wearing a trench coat or duster, standing in almost full silhouette as he surveys the abandoned ruins of a city, all bathed in misty orange light. In the upper left corner, the words "Not This" appear superimposed on part of the orange sky. A Tesla logo appears in the lower right corner. Exhibit C is a screenshot of this second slide image from Musk's presentation.

107. Alcon submits that, for anyone familiar with BR2049, the Exhibit C image objectively reads visually either as an actual still image from BR2049's

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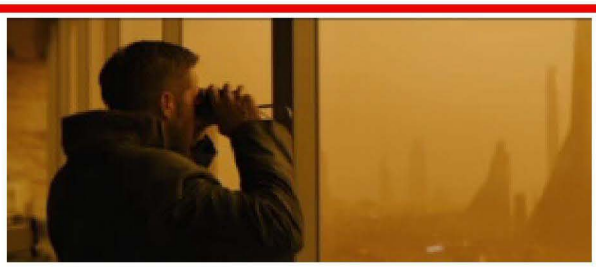
iconic sequence of K exploring the ruined Las Vegas, or as a minimally stylized copy of or illustration of such a still image, or otherwise as an illustration of a scene from BR2049 and specifically its Las Vegas Sequence.

108. If there were any doubt that Musk and Tesla intended to evoke BR2049 with the Exhibit C image, Alcon submits that Musk effectively erased such doubt with his voiceover comments during the approximately 11 seconds that the infringing Exhibit C image was completely filling the livestream screen. Musk said: "You know, I love 'Blade Runner,' but I don't know if we want that future. I believe we want that duster he's wearing, but not the, uh, not the bleak apocalypse." Alcon submits that this effectively identified the Exhibit C image as an illustration of BR2049, its main character K, and BR2049's iconic Las Vegas Sequence. The Exhibit C image then disappeared from the screen and Musk segued to talking about how what we all should want is a happier looking future, and how happy and joyful Musk's vision of cities and highways filled with driverless robot cars will be and why.

109. Musk's Event-opening remarks effectively identified Exhibit C to the audience as an image of or from BR2049 and its main character K. Musk used Exhibit C and his remarks about it to set the theme of the Event. The essence of the Event was a commercial call to action to invest in Tesla and to buy Tesla cars and robots. Musk's presentation occurred to a large live audience on WBDI's lot, using WBDI's infrastructure and resources. A video feed of it also was displayed over WBDI's systems, and livestreamed worldwide to millions of viewers.

110. The Event's worldwide livestream X feed, including Musk's BR2049-infused opening, was re-posted by Tesla, Musk, X and others thousands of times, with millions of total views. The false affiliation between BR2049 and Alcon, on the one hand, and Tesla and Musk, on the other hand, is irreparably entangled in the global media tapestry, as all Defendants knew would inevitably happen.

111. Exhibit C and the portion of the recorded Event feed containing it (Exhibit 2 to February 4, 2025 Declaration of Christopher Marchese in Support of Defendants' Motions to Dismiss Original Complaint [Dkt. 24-2] ["Event Recording"]) are substantially similar to copyright-protected elements of BR2049, and infringe Alcon's exclusive copyright rights in BR2049. *See* Exhibit D (copyright side-by-side comparison). A side-by-side comparison of Exhibit C against Exhibit A and Exhibit B images from BR2049 is also shown below:



112. Musk and Tesla's conduct also created at least likelihood of confusion about whether there is any licensing association between Alcon, on the one hand,

and Musk or Tesla, on the other hand (there is not and never has been). *See* E (sample Alcon BR2049 trade dress images); and F (side-by-side Exhibit C and Alcon trade dress comparison). A side-by-side comparison of Exhibit C against Alcon trade dress images from Exhibit E is also shown below:

Musk's and Tesla's Infringing Conduct Was Intentional

113. Plaintiff is informed and believes, and subject to need for discovery, alleges that, although Musk said the words "Blade Runner" without the year number (without "2049"), he subjectively meant to evoke BR2049 rather than the original 1982 Picture, and he was motivated to do so. The two films are related, but BR2049 has its own distinct brand and secondary meaning, and BR2049's specific goodwill is more relevant to Tesla's and Musk's Robotaxi product.

114. Although the 1982 Picture does prominently feature flying car "spinners," the cars in the 1982 Picture are not shown to be wholly or even partially autonomous, or even shown to employ artificial intelligence themselves in any way. None of the cars in the 1982 Picture play any role as a quasi-sentient companion to the Deckard lead character in the 1982 Picture, like K's spinner does for K in BR2049. Pointedly, then, if you are a company (or own one) specifically trying to market artificially intelligent, wholly or partially autonomous self-driving cars (as Tesla and Musk are), the 1982 Picture has little or no specifically relevant context. In contrast, BR2049 has extremely relevant context and worldwide goodwill in precisely the areas of artificial intelligence, self-driving capability, and autonomous automotive capability that Tesla and Musk are trying to market.

115. Musk did successfully evoke BR2049 specifically, including to consumers and potential car maker and car brand customers of Alcon, and that is true even though Musk only said the words "Blade Runner" without adding the year "2049." For the reasons detailed in the next paragraphs below, Musk's act of displaying the Exhibit C Image -- an image of a man in near-silhouette, with close-cropped hair and wearing a duster, while he surveys an orange-light-bathed ruined and abandoned cityscape -- and displaying it for 11 seconds while Musk talks

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about "Blade Runner" and a specifically "apocalyptic" future – that is all specifically evocative of BR2049, and not of the 1982 Picture.

116. While both the 1982 Picture and BR2049 show dystopian urban futures, only BR2049 has a specifically apocalyptic setting. Only BR2049 has an abandoned and ruined city (Las Vegas) that has suffered an event of extreme destruction (the detonation by terrorists of a dirty nuclear device). The ruined Las Vegas is where the most dramatically charged events of the BR2049 story take place (K's encounter with the long-lost Deckard). The setting has striking color design, cinematography and other visual elements: it is distinctly bathed in "apocalyptic" misty orange light, just like the Exhibit C Image and which the 1982 Picture does not have in any comparable scene involving any kind of ruined city or post-apocalyptic setting. Throughout BR2049, there also are general references and story elements about civilization having semi-recently suffered a broader, apocalyptic nuclear conflict in the mid-range past, including electromagnetic pulse activity that destroyed many electronic records, making investigation of the past difficult.

117. In contrast, the 1982 Picture is set in a dystopian urban landscape of a then-futuristic 2019 Los Angeles, but the 1982 Picture's setting is specifically not apocalyptic. In the 1982 Picture, there has not been any dirty nuclear device, or nuclear electromagnetic burst which destroyed electronic records, or other apocalypse that has hit Los Angeles or Las Vegas or any other location.

118. If anything, the urban setting of the 1982 Picture is the opposite of abandoned and ruined: it is overrun with too much ongoing industry and suffering from overpopulation. It is not a stark, lonely, misty, orange, dry, radiated desert ruin like BR2049's Las Vegas or the Exhibit C Image, but rather is an overcrowded neon urban prison, where the citizens are trapped in constant night plagued by perpetual rain and an ever-present bombardment of consumer

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advertising. In the 1982 Picture, neither the main character nor anyone else ever goes to any orange-colored post-apocalyptic ruined city or any other such location, in a duster or otherwise. Further, while in BR2049, Deckard is (or was) a "blade runner" who appears in BR2049's Las Vegas Sequence setting, he never wears a duster in BR2049 at all: Musk's voiceover reference to a blade runner wearing a duster in a post-apocalyptic setting while directing the audience to the Exhibit C image, can only be a reference to K (not Deckard).

119. Plaintiff thus alleges on information and belief, subject to need for discovery, that Musk thus very clearly meant specifically to evoke to the audience including actual and potential purchasers and the consuming public, not the 1982 Picture, but rather BR2049 and everything that goes with it -- including artificially intelligent autonomous cars like the Tesla cybercab being pitched at the event. He successfully did.

120. Plaintiff submits that any argument that Musk and Tesla only meant to talk broadly about the general idea of science fiction films and undesirable apocalyptic futures and juxtaposing them with Musk's ostensibly happier robot car future vision, and that they just used BR2049 by chance, without conscious awareness of and intent to appropriate BR2049's special secondary meaning in the context of trying to sell artificially autonomous cars, is not credible.

121. The art of advertising is at least partially about choosing expressive levers that will quickly and effectively move the audience emotionally, psychologically, and/or intellectually into a state where the seller can more easily influence them to do the thing or things the seller wants them to do. Here, especially when the entire context of the Event is considered, Plaintiff is informed and believes and, subject to the need for discovery alleges, that part of Musk's and Tesla's goal was to try to convince the audience at the outset of the presentation that the decision that the presentation was going to put to them (whether or not to

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buy or bet on Musk's and Tesla's artificially intelligent car products) was urgent and critical to the future of joint human/AI civilization. Musk also wanted to instill a mood not only of curiosity, but also of fear, anxiety and urgency. Plaintiff pleads on the same basis that Musk also wanted strongly to suggest that there are right and wrong answers to the question, leading to good futures and bad futures (and that doing what Musk wants leads to the good futures).

122. What Musk did was use the lever of BR2049's protectable elements as Musk's specific vehicle of expression to communicate those themes and moods, to move his audience into the emotional space Musk wanted the audience to be in for the presentation. Whether or not Musk intended that, it was the objective effect. That infringed Alcon's copyright in the BR2049.

123. Defendants' conduct also violated the Lanham Act, creating actual confusion or a likelihood of it in the relevant marketplaces, about BR2049 branding, including Alcon's marketing efforts with potential auto brand partners on the *Blade Runner 2099* television series, among other marketplace confusion and brand damage.

124. Among other points creating likelihood of confusion, the Exhibit C image is explicitly misleading as to whether there is any brand association between Alcon or BR2049 and Musk or Tesla. The Exhibit C image is itself very similar to images which Alcon uses for marketing and publicity purposes, including as trade dress, and in creating Exhibit C, Musk and Tesla affixed a Tesla logo in the lower right corner. In a real sense, Musk and Tesla put Alcon's mark or trade dress right next to (literally affixed together to) Tesla's. This is further exacerbated by Musk using the phrase "Blade Runner" when talking about the Exhibit C image, as Alcon does have an ownership interest in that word mark, and it is understood in usage as referencing either the 1982 Picture or BR2049.

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Defendants Make No Remedial Efforts Between the Event and Alcon Filing Suit and WBDI Effectively Encourages Musk and Tesla Not To Do So

125. On October 16, 2024, before filing suit, Alcon contacted WBDI's representative (Heath) by telephone to express Alcon's dissatisfaction and to request information about what happened to have things go so wrong, especially after the Alcon Event Directions to WBDI and Heath's indication to Alcon that WBDI would perform all of them. WBDI refused to provide any meaningful explanation and did not engage in any remedial conduct, not even an apology to Alcon or public denouncement of Musk and Tesla's conduct as violating Alcon's rights. WBDI's refusal to remediate encouraged and supported Musk and Tesla not to do so, and indeed all Defendants refused to do so.

THE 1982 PICTURE

126. Warner Bros. Pictures was the original distributor of the 1982 Picture and still holds distribution rights to it. Warner Bros. Pictures was not the production entity, legal author or ultimate copyright holder of the 1982 Picture. The 1982 Picture was registered with the Copyright Office on November 16, 1982 under registration number PA0000157612, with the original author and copyright claimant being a legal entity named The Blade Runner Partnership. The Blade Runner Partnership was not a Warner Bros. Pictures entity. The Blade Runner Partnership subsequently created and registered multiple versions or cuts of the 1982 Picture with the Copyright Office.

127. In or about 2011, Alcon acquired a broad set of rights in the 1982 Picture and underlying properties, including motion picture, television and other derivative work rights to the 1982 Picture and the original Philip K. Dick "Do Androids Dream of Electric Sheep?" novel, all from a successor entity to The Blade Runner Partnership.

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128. The rights acquired by Alcon included, and Alcon still owns, a perpetual non-exclusive, irrevocable license to the word mark "BLADE RUNNER." Warner Bros. Pictures also has non-exclusive, irrevocable rights to the word mark "BLADE RUNNER."

129. After the 2011 rights acquisition by Alcon, if not before, the essence of Warner Bros. Pictures exclusive rights in the 1982 Picture was and is that Warner Bros. Pictures continues to own the exclusive right to exploit the 1982 Picture as is (with no rights to make meaningful derivative, or new, works). Warner Bros. Pictures as a successor to The Blade Runner Partnership also owns and controls many or even most physical elements of the 1982 Picture (*e.g.*, physical prints of the 1982 Picture, old costumes, props, and the like), including car props (although Warner Bros. Pictures may from time to time sell these props to private parties). Meaningful rights to make fresh content based on the 1982 Picture belong to Alcon, by virtue of Alcon's sweeping exclusive derivative work rights.

130. Additional facts about the 1982 Picture are alleged in Appendix 1, including a story overview.

BR2049

131. BR2049 Is The Copyright Infringed Work. Alcon produced BR2049 as a sequel to the 1982 Picture, pursuant to Alcon's derivative work rights. Alcon is the owner and, as to all rights at issue herein, the exclusive copyright holder, of BR2049. In copyright terms of art, BR2049 is both a "motion picture" and the "infringed work" in this action. BR2049 has been registered with the United States Copyright Office under registration number PA0002056792 since October 6, 2017.

132. Warner Bros. Pictures is the original and current (but not perpetual) distributor for BR2049 in the domestic territory (U.S. and Canada), pursuant to a license from Alcon. SPE is the distributor for BR2049 for the rest of the world, also pursuant to a rights grant from Alcon.

133. Exhibits A and B Relative to the Infringed Work. The images in Exhibits A and B are not themselves the Copyright Office-registered "infringed work" claimed. In the terminology of the United States Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.*, the images in Exhibits A and B are examples of "still images" from BR2049 – in particular from the core dramatic sequence that appears in BR2049 at runtime 1:36:28-1:37:59, and continuing at 1:40:48-2:01:50 ("Las Vegas Sequence"). The Exhibit A image appears in BR2049 at about 1:37:55 in BR2049's run time. The Exhibit B images are from run times between 1:36:28-1:37:59, 1:40:48-1:43:35, and 1:51:30-2:01:50.[17]

134. Exhibit A Image in Story Context. The Exhibit A image is from shortly after K's arrival in Las Vegas with his spinner, a fully autonomous flying car. (*See* BR2049 story overview in Appendix 2.). It is an image positioned from behind K, with his close-cropped hair, garbed in his distinctive trench coat or "duster," as he stands next to his spinner, facing away from the camera lens and audience to survey the devastated orange-light-bathed Las Vegas cityscape. In the Exhibit A image, K is surveying the ruins as he prepares to set out on the walk through them that will lead him to the long-lost and mysterious Deckard – the most highly anticipated encounter in BR2049.

135. Exhibit B Image in Story Context. The Exhibit B images are samples of other still images from the Las Vegas Sequence. They include images from K's walk through the ruins to encounter Deckard, and from when K is in Deckard's aerie looking out the picture windows at the ruined city. (*See* BR2049 story overview in Appendix 2.)

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[17] Alcon has noted the respective run time references next to each image, directly on Exhibits A and B.

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136. Additional facts about BR2049 are alleged in Appendix 2, including a story overview and list of claimed protected elements.

ALCON MARKS AND TRADE DRESS

137. "BLADE RUNNER" Word Mark. In actual usage, the words "BLADE RUNNER" can refer to the 1982 Picture, BR2049, or both (as opposed to the words "BLADE RUNNER 2049," which only refer to BR2049). (*See, e.g.*, Exhibit E at E-3 [use of "BLADE RUNNER" mark on back cover of the Alcon-licensed coffee table art book *The Art and Soul of Blade Runner 2049*]; Exhibit H at H-22 and H-23 [Space.com news article referencing cybertruck as "straight out of Blade Runner" and making clear in body of article that writer is referring to both the 1982 Picture and BR2049 by the headline]; Exhibit J and recorded video interview of Event invitee recorded referenced therein, https://www.youtube.com/watch?v=KyBFlYFIXcg [invitee answers journalist's question of what invitee expects from the Event by explicitly referencing "Blade Runner 2049," and by the end of the invitee's answer to the journalist has shortened their usage to just "Blade Runner," even though the invitee appears to be talking about BR2049 in the entire answer, transcribed *supra*, ¶ 69].)

138. "BLADE RUNNER 2049" Word Mark. Alcon exclusively owns, and has continuously exclusively owned since prior to 2024, the unregistered trademark word mark "BLADE RUNNER 2049." The words "Blade Runner 2049" are fanciful, arbitrary or suggestive and thus inherently distinctive. Even if only descriptive, they have nonetheless achieved secondary meaning through years of continuous use in commerce by Alcon, beginning no later than 2017.

139. Alcon's uses of BLADE RUNNER 2049 include without limitation uses in connection with and to market, promote and advertise motion pictures, DVDs, comic books, video games, and other merchandise items. As a result, the BLADE RUNNER 2049 mark is widely recognized by the general consuming

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public of the United States and the rest of the world as a designation of source of the goods and services of Alcon (or of a single source). As detailed further below, the BLADE RUNNER 2049 mark is also recognized by both the general consuming public and by major car manufacturers and car brands as connoting affiliation with or sponsorship by Alcon when used in connection with automobiles and automobile brands (including both real automobiles and concept automobiles).

140. BR2049's Main Character K. The character K, including descriptions of K, and visuals images that look like or evoke the character K and/or that are held out to be the character K, either explicitly or implicitly, are unregistered marks and/or protectable trade dress of Alcon. They also have achieved secondary meaning as trade dress widely recognized by the general consuming public of the United States and the rest of the world as a designation of source as to the goods and services of Alcon (or a single source) in all categories identified for the BLADE RUNNER 2049 mark.

141. Including because of the close connection between K and his flying fully autonomous spinner in BR2049, Alcon's K marks and trade dress are especially recognized by both the general consuming public and by major car manufacturers and car brands as having secondary meaning connoting affiliation with or sponsorship by Alcon (or a single source) when used in connection with automobiles and automobile brands (including both real automobiles and concept automobiles). Sample visual images of K as he appears onscreen in BR2049 can be seen in Exhibits A and B. Sample visual images of K as he appears in marketing and commercial uses by Alcon appear in Exhibit E.

142. Uses of K in the above contexts are non-functional. That an automobile is associated with an image of K has no actual bearing on the function of the automobile, but rather serves only as a source-identifying or source-affiliation function.

143. Alcon Marketing Uses of Exhibit A. The Exhibit A image was the lead visual image used for numerous marketing, promotional and publicity press pieces about BR2049 preceding BR2049's October 2017 initial theatrical release. The Exhibit A image, including in the context of these marketing uses, is both inherently distinctive and also has secondary meaning, including by virtue of the extensive marketing spend and resulting widespread publicity and association with BR2049 that the Exhibit A image achieved with the 2017 global release of BR2049 and subsequent uses. In the context of marketing, promotional and publicity identification of BR2049, the Exhibit A image is non-functional; for instance, on the YouTube trailer and other sites, the trailer and sites would still play and operate without the Exhibit A image. The Exhibit A image is still to this day the image that appears as the cover image to the official BR2049 marketing and promotional trailer as that trailer appears on YouTube and other sites:

(Exhibit E at E-1.)

144. A slightly modified version of Exhibit A (removing the K character from the image) is the back cover image for *The Art and Soul of Blade Runner 2049*, the coffee table book celebrating BR2049's visual design elements (K appears on the back cover image below in banner montage, fourth image from left, just above the main image of the spinner, and also appears on the front cover of the same book, as shown further below):

(Exhibit E at E-3.) The modified image as used in this context is non-functional and only serves as source identification. The image does not help bind the pages or make the book cover more durable or more utilitarian in any respect.

145. The Exhibit A image is thus one of the most iconic images from BR2049, and also one of the most commercially significant in a marketing sense. It immediately evokes BR2049 and K by itself, and is strongly associated with both of them in commercial marketing uses.

146. Alcon Marketing and Commercial Uses of Exhibit B Images and Similar Images. Images from BR2049's same Las Vegas Sequence as the Exhibit A image also have been, and still are, used by Alcon for marketing, promotion and publicity for BR2049. Exhibit B images that prominently feature a male figure in a trenchcoat or duster moving through a distinctly orange-lit empty wasteland, or wasteland with post-apocalyptic appearing urban ruins, are inherently distinctive, and have also established secondary meaning. Indeed, when fans want to create fan art images of BR2049, images meeting the foregoing description are one of the most common forms of image they create. As just one example of an Alcon-licensed use of such an image, the front cover of the same *The Art and Soul of Blade Runner 2049* coffee table book referenced above is from the Exhibit B

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images set (K's duster-garbed silhouette moving alone through misty orange-lit desert landscape):

(Exhibit E at E-2.) The image as used in this context is non-functional and only serves as source identification. The image does not help bind the pages or make the book cover more durable or more utilitarian in any respect. However, it is very distinctive and has acquired secondary meaning, such that on the book cover image above, if the word mark "Blade Runner 2049" were removed from the cover, consumers would still instantly recognize the book as pertaining to B2049, from the K image alone.

147. Additional Examples of marketing and commercial uses of Exhibit B images and those like them from BR2049's Las Vegas Sequence are in Exhibit E. Exhibit E at E-5 is an art poster created by artist Pablo Olivera pursuant to a license from Alcon, and which art poster was offered for sale and sold commercially:

(Exhibit E at E-5.)

148. Exhibit E at E-4 is an image of a one sheet (marketing promotional poster) used by Alcon for the global theatrical release of BR2049:

(Exhibit E at E-4.)

149. Exhibit B images and those like them from the Las Vegas Sequence -- of a silhouetted trench coat-garbed (or duster-garbed) man moving through a misty orange-colored ruinous urban desert landscape -- are immediately evocative of BR2049 and K, without any other cues or references required. They are thus inherently distinctive, and have secondary meaning, including through the consumer association between BR2049 and the images built up by extensive Alcon marketing and publicity efforts using the images.

150. Combinations of Elements Evocative of BR2049. Alcon also has a protectable Lanham Act interest (mark, brand or trade dress) in combinations of elements which evoke or tend to evoke BR2049 in the eyes of the ordinary consumer, in relevant markets in which Alcon does business or intends to do business, including without limitation licensing affiliation rights or advertising rights to car companies and car brands. Pertinent here, Alcon's protectable rights in this regard extend to showing images that look like K moving through or

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surveying an orange-lit post-apocalyptic ruin, and that are being present in the context of science fiction movies, including the context of autonomous cars. That combination of elements evokes BR2049 under the "total effect of [the infringer's] product and package on the eye of the ordinary purchaser test" applied in cases such as *Warner Bros. Entertainment v. Global Asylum, Inc.*, 107 U.S.P.Q.2d 1910, 2012 WL 6951315 at *8 (C.D. Cal. 2012).

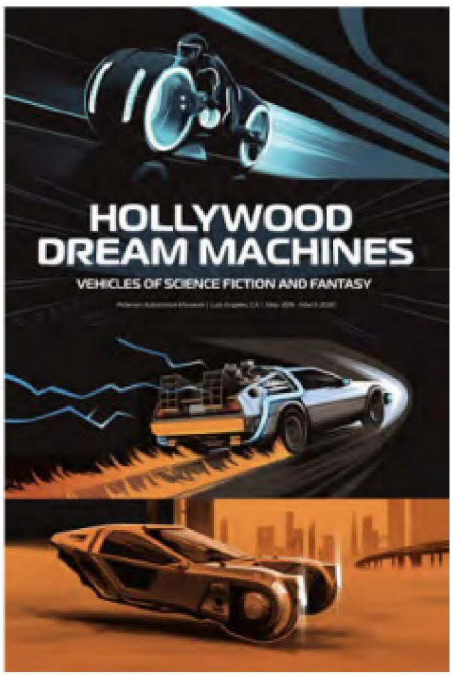
151. Beginning in or about 2011 and on a continuing basis ever since, Alcon expended and continues to expend vast resources to develop, produce and maintain BR2049 and BR2049-associated goodwill. Alcon has expended in excess of $200 million on such efforts to date, from original acquisition of the relevant underlying rights, to development, production, marketing, and distribution of BR2049, to ongoing brand development and active policing of infringements, to development, production and distribution of numerous derivative works, including without limitation television series, comic books, and video games.

152. Alcon theatrically released BR2049 globally on a day-and-date basis in October 2017. BR2049 received and still has both popular and critical acclaim. BR2049 received an 89% positive audience reaction on well-known film review site Rotten Tomatoes. Among numerous other awards, BR2049 was nominated for five Academy Awards, and it won two: Best Cinematography and Best Visual Effects. IGN gaming website named BR2049 the Best Movie of the Year for 2017, the Golden Tomato Awards named it the Best Sci-Fi/Fantasy Movie of 2017, and the 2018 Saturn Awards named it the Best Science Fiction film. BR2049 is regularly identified as one of the best science fiction movies of all time on lists of such movies generated by journalists, critics, and consumers.

153. BR2049 and its brand (including specifically the words "Blade Runner" even without the year "2049," when used in contexts that evoke BR2049 distinct from the 1982 Picture, and specifically including the Exhibit A image and

Exhibit B images) all have especially high resonance as to artificial intelligence, fully autonomous automotive technology, and the combination of the two. Especially in these contexts, the Exhibit A image and Exhibit B images are entirely non-functional – they do nothing to make any autonomous automotive technology or artificial intelligence function any better.

154. K's spinner has been recognized culturally as one of the most famous vehicles in motion picture history. For example, the Petersen Automotive Museum in Los Angeles featured one of the full-scale prop models of K's spinner prominently in the museum's extended run of its "Hollywood Dream Machines: Vehicles of Science Fiction and Fantasy" special exhibit which ran from 2019 to 2020. The BR2049 K spinner was one of three vehicles selected to be on the marketing one-sheet poster for the exhibit, along with the time-traveling DeLorean from the "Back to the Future" movies and a light cycle from "Tron: Legacy." The poster was created pursuant to a license from Alcon:



(Petersen Automotive Museum One Sheet Poster (2019-2020).)

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WBDI HAD THE CONTRACTUAL RIGHT AND ACTUAL ABILITY TO POLICE MUSK AND TESLA'S INFRINGING CONDUCT BUT INTENTIONALLY OR NEGLIGENTLY FAILED TO EXERCISE IT

155. As referenced in prior paragraphs, Alcon's understanding is that there is no dispute that, even after the Alcon Event Directions to WBDI, WBDI did not actively police Musk's and Tesla's Event conduct against uses of BR2049 or any other property exclusively owned by Alcon. By Alcon's understanding, WBDI's excuse and justification for not having done so is WBDI's contention that WBDI had no contractual right to police Musk and Tesla's Event conduct with respect to IP laws, and that WBDI also had no actual or practical ability to do so, either. (Musk's and Tesla's positions on both of these issues is silence.)

156. Alcon disputes WBDI's excuse and justification in both respects.

Alcon's Sources and Bases for Information and Belief Pleading on WBDI's Contractual Rights to Police IP Law Violations and Actual Ability to Do So

157. Plaintiff's sources for its information and belief pleading on WBDI contractual policing rights and actual ability to police include:

a. Expert Consultation: Plaintiff's counsel hired and consulted with expert professionals in the studio lot event business and live event telecasting and livestreaming business. These expert consultants reviewed available materials, including Defendants' Exhibits 1 (public redacted version only) and 2 (Event Recording), and applied their own experience and knowledge to assist pleading of the SAC.

b. Custom and Practice and Industry Standards: The business of studios licensing their lot space and resources and potentially their IP for private events is a regular line of business for studios. It has recognized customs and practices and industry standards, although the specific policies and practices of each studio can vary to some extent.

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The live event telecasting and livestreaming business similarly has its own customs, practices, and industry standards. The expert consultants provided Plaintiff's counsel with this information. Plaintiff's counsel is also an experienced content clearance and entertainment industry profit participation attorney.

c. Defendants' Exhibit 2 (Event Recording) and Other Recordings of the Event: This partial documentation of what happened at the Event and how it was conducted is a reasonable source, and one of the best sources, of what the agreed terms of the Event relationship between WBDI and Tesla must have been or likely were. In addition to the Event Recording, Plaintiff has located other recordings, including Event attendees who posted documentation of what occurred at the Event (videos, photographs, social media text posts) on social media and similar public facing sources.

d. Information from Individual Percipient Witnesses: Individuals with some percipient knowledge of what happened as to Event negotiations, the Event preparations process, and agreed terms and documentation of same are one of Plaintiff's sources of information. This includes WBDI shared services licensing executive Heath, who provided Alcon with information about Event matters prior to the filing of the action, both telephonically, and in communications like email records.

e. Defendants' Exhibit 1: This is an important source, and how Plaintiff applies it is discussed in detail in the sections below.

f. Common Knowledge and Plaintiff's Counsel's Own Actual Knowledge of Certain Matters: This includes subjects like the nature and significance of particular pieces of IP.

g. Independent Factual Research: This includes research on such matters as present ownership and location of the 1982 Picture "56 Sedan," and various other matters

158. Some overarching principles and observations from the above sources guide Plaintiff's information and belief reasoning for its pleading on the WBDI-Tesla relevant contract terms and WBDI's actual IP policing abilities:

a. Livestreaming Rights Industry Standards and Customs and Practices: In the studio lot event business, livestreaming rights do not necessarily go along with the right to use the physical event space. If livestreaming rights are granted, they are virtually always documented, including usually with special additional types of insurance the licensee must have (*e.g.*, media liability insurance). They are usually for an additional fee, over and above the live event space fee. Where they are granted, there will be clearance protocols established. There will be a production truck or video village set up somewhere on the lot near the event, where a production and direction team will produce and direct the livestream in real time, with ability to make clearance decisions and effect them (*e.g.*, cutting the sound of the livestream, switching off of a camera showing problematic material, replacing the livestream feed with a test pattern if a significant clearance problem arises). If the production and direction team does not include an embedded clearance professional (from the studio or otherwise), the production and direction team will likely rely on a clearance sheet or other typically written directions or guidance. If they are conducting a livestream from a studio, they will as a practical matter at a minimum be very deferential to and take note of studio clearance instructions and guidance, even if not strictly

contractually required to do so. (It is a relatively small world and making oneself unwelcome at a studio lot is not necessarily good business practice).

b. Interaction Between Livestream Rights and Music: One of the biggest concerns and reasons strong clearance protocols are required if a lot event is livestreamed is proper clearance of music rights and vigilance against unauthorized uses of popular music in particular. If an event is only live (in-person, no livestream), rights to use songs and sound recordings of songs can usually be handled efficiently and economically, including through blanket licensing societies, like ASCAP. Livestream music rights, on the other hand, generally require obtaining often very expensive synchronization licenses, and often have to be negotiated work-by-work with particular rights holder(s).

c. Valuable Studio IP Customs and Practices and Industry Standards. Studios are in the business of monetizing their IP content. Among other concerns, studios have to guard against third party infringement, and also potentially have to answer to profit participants on accounting for money that comes into the studio that might be attributable a particular use. The Event Recording and social media posts and other public online posts by Event attendees show the following valuable pieces of IP content known to be owned by one or more of WBDI's subsidiaries (the "Valuable WBDI IP In The Event"), and all of which would almost certainly have been done pursuant to a documented license agreement, and on a case-by-case basis (*i.e.*, separate licenses for "Westworld" and for the Batmobile), each with their own attached specific monetary fee:

(i) "Westworld" motion picture and television property elements. (*See, e.g.*, Event Recording at 0:42:49-42:51; 0:43:24; 0:47:19-0:47:31.) The uses appear to include the "Westworld" name and brand, in the live portion of the Event, including on large digital map displays prominent to in-person attendees (although not prominent on the livestream). On social media posts by Event attendees, "Westworld" branding is also visible on the digital display screens inside the Tesla vehicles at the Event.

(ii) The Batmobile: (*See* Event Recording at 1:15:47-1:15:43.) The Batmobile is one of the most diligently guarded specific pieces of IP content in the WBDI conglomerate IP library. It is visible on the lot for in the Event space for the Event. That is almost certainly not coincidental, and WBDI's decisions about it would have been careful and documented.

(iii) "Mad Max" derivative work poster: This work is not visible on the Event Recording, but it is clearly visible on social media posts of one more Event attendees who took photos or video on their phones at the Event. One visible use from such sources is a copy of one of the iconic one sheets for the original 1979 "Mad Max" motion picture featuring the Mad Max character in a face shielded helmet clad in a black leather racing or motorcycle suit and stepping forward on his right leg away from a vehicle while brandishing a gun, all on a

yellow background with red lettering, but in an altered version to make the vehicle behind the lead figure a cybertruck, and changing the one sheet title words from "Mad Max" to "Mad Musk."

(iv) 1982 Picture "56 Sedan": This is the orange (when shown in clear lighting) futuristic car driven by Deckard in the 1982 Picture. (Exhibit G at G-2.) It can be seen clearly at the Event in an attendee's social media post (Exhibit K at K-2), and also obliquely in the background of the Event Recording at 1:05:33-1:05:49 and 1:07:03-10.

WBDI Had the Contractual Right to Police Musk's and Tesla's IP Law Compliance and Contractual Compliance During the Event, or, to the Extent It Failed to Secure Such Contractual Rights, That Was a Departure From and in Violation of WBDI's Own Standard Practices and Policies

159. The allegations in paragraphs 160 to 177 below are **WBDI Contractual IP Policing Rights Alternative Theory 1.**

160. Plaintiff alleges on information and belief, subject to need for discovery, that WBDI in fact did have more than adequate contractual rights to police Musk and Tesla's compliance with IP laws in the course of the Event.

161. Relevant Definition of Event Contract for Analysis of WBDI Policing Rights and Policing Ability Issues. As a threshold matter, Plaintiff alleges and contends that, for purposes of issues that depend in whole or in part on what the contractual rights and abilities of WBDI to supervise or police Musk and Tesla were or were not, the "contract" that matter for analyzing such issues is not whatever contract terms may or may not have existed between WBDI and Tesla at some earlier date than the date of the actual Event (as WBDI appears to suggest).

Instead, the relevant "contract" is: the "Event Contract," defined as whatever full set of agreed contractual terms existed between WBDI and Tesla, however manifested, as of the point in time when WBDI had received the Alcon Event Directions to WBDI, or, if better for Alcon, as of the actual commencement of the Event at about 8:00 p.m. PDT on October 10, 2024.

162. The Event Contract as so defined is not necessarily set forth in any one single written contract document, nor were the full overall contract terms in the Event Contract necessarily reached between WBDI and Tesla all at once, but rather likely at different times, in a kind of progression. The Event Contract likely looks something like one or more main contractual agreement documents, with multiple addendums and/or additional, but clearly related, side agreements, or supplemental or ancillary agreements. The Event Contract could also include (and Alcon alleges does include) understandings reached informally between WBDI and Tesla in such communications as emails, or even oral or implied-in-fact understandings between WBDI's and Tesla's respective representatives with authority.

163. By the Event Contract as used here in the SAC, Alcon means that whole set of agreed terms, however they are manifested, as WBDI and Tesla had agreed to them by about 2:00 p.m. PDT on October 10, 2024 (about the point in time when Alcon communicated the Alcon Event Directions to WBDI), or, if better for Alcon, by about 8:00 p.m. PDT on October 10, 2024 when the Event actually commenced. Further, in the discussion of Event Contract terms and performances here, unless otherwise noted, "WBDI" means "WBDI or a WBDI subsidiary as the nominal contracting party, but which subsidiary for all issues relevant herein Alcon alleges on information and belief, subject to the need for discovery, was acting at the direction and under the control of WBDI."

164. <u>The Event Contract Provided WBDI with More Than Adequate Contractual Rights to Police Musk and Tesla Against Violations of Alcon's</u>

Copyright and Lanham Act Rights in the Course of the Event. Plaintiff makes the allegation of the foregoing underlined heading sentence, and the allegations of paragraphs 164-177 below, on information and belief, subject to need for discovery, including under the following reasoning.

165. Part of Plaintiff's support for this contention is the language of Defendants' Exhibit 1. (Dkt. No. 32-1 [publicly redacted version]; both the publicly redacted and sealed complete versions are referred to in the SAC as "Defendants' Exhibit 1" or "Exhibit 1.")

166. Defendants' Exhibit 1 on its face is a letter agreement on "Warner Bros. Studio Operations" letterhead, with attachments, transmitted on September 4, 2024 by an executive at "Warner Bros. Special Events" to an executive at Tesla, for a "Tesla Event" to take place on October 10, 2024 from 7:00 p.m. to 12:00 a.m., with a countersignature by Tesla on September 6, 2024. WBDI has represented to Plaintiff and the Court that this Exhibit 1 document is a genuine document in WBDI's corporate records. Further, as Plaintiff understands WBDI's position, WBDI asserts that Defendants' Exhibit 1 is the one and only contractual document between WBDI (or a WBDI subsidiary contracting on WBDI's behalf) and Tesla regarding the Event, and contains all of the contractual terms between WBDI and Tesla about the Event.

167. Plaintiff was not involved with creating Defendants' Exhibit 1, and has had no opportunity to take discovery about it or anything else. As a result, Plaintiff pleads two alternative theories about Defendants' Exhibit 1, both of them on an information and belief basis, subject to need for discovery, as follows:

a. **Nature and Authenticity of Exhibit 1 Alternative Theory 1:** Defendants' Exhibit 1 is a genuine document from WBDI's corporate records, and is or was an actual contracting document between WBDI and Tesla regarding the Event. However, including because Exhibit 1

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is dated several weeks before the Event actually occurred, and because its written terms on their face do not fully match, and sometimes flatly contradict, the observable evidence about what occurred with the Event itself, Exhibit 1 is part of, but only part of, the Event Contract. By the October 10, 2024 date of the actual Event, Exhibit 1 had been amended, modified, and/or supplemented by other communications and negotiations between WBDI and Tesla, such that Exhibit 1 only provides at most partial information about the Event Contract, and later agreed terms of the Event Contract almost certainly contradict some of the written terms of Exhibit 1. However, on terms like rights to police Tesla compliance with IP laws or other contractual or legal compliance, whatever the full set of Event Contract terms actually were between WBDI and Tesla regarding the Event, those policing and compliance terms of the Event Contract were at least as strongly in favor of WBDI having such rights against Tesla, and Tesla's employees, agents, contractors and representatives, as appear on the face of Exhibit 1.

b. ***Nature and Authenticity of Exhibit 1 Alternative Theory 2:*** *Defendants' Exhibit 1 is not a genuine document, including in the sense of not being any part of the actual contract terms between WBDI and Tesla regarding the Event. Exhibit 1 either is not actually what it appears to be on its face, or, even if it is, or once was, it was subsequently entirely superseded by other contracting documents, at the level of a novation or equivalent, such that it is not any part of the Event Contract. Even to the extent any of that is true, however, Plaintiff alleges on information and belief, subject to the need for discovery, that on all terms in the Event Contract regarding or related*

to WBDI's contractual rights to police Tesla compliance with IP laws or other contractual or legal compliance, those terms were at least as strongly in favor of WBDI having such rights against Tesla, and Tesla's employees, agents, contractors, and representatives, as appear on the face of Exhibit 1.

168. Pursuant to both Nature and Authenticity of Defendants' Exhibit 1 Alternative Theories 1 and 2, the Event Contract provided WBDI with at least the level of contractual policing rights and compliance enforcement rights against Tesla regarding compliance with IP laws and contractual obligations as appear on the face of Exhibit 1.

169. Exhibit 1 on its face has an extremely broad compliance with laws clause, obligating Tesla, as the defined "Client" under Exhibit 1, as follows:

> **9. <u>Compliance with Laws, Rules and Regulations</u>:**
>
> **9.1** Client's and Client's Visitors' actions and conduct, as well as equipment furnished by Client, will conform to all applicable Federal, State, and City statutes, ordinances, regulations and laws, including, but not limited to, all applicable Occupational Safety and Health Acts. Such compliance will include the acquisition by Client of all necessary licenses and permits at its own expense. Studio agrees that its actions and conduct will conform to all applicable Federal, State and City statutes and ordinances, regulations and laws.

(Defendants' Exhibit 1 at page 4, section 9, subsection 9.1, bold in original.)

170. On its face, this term requires Tesla to comply with all Federal laws, without any exception for copyright law or the Lanham Act, and further requires Tesla to comply with such laws by "the acquisition by [Tesla] of all necessary licenses … at its own expense."

171. A Tesla failure to comply with these terms by, for instance, Musk or Tesla committing copyright infringement or violating the Lanham Act, would be a

violation of Federal law and thus a contractual breach by Tesla of Exhibit 1.

172. Defendants' Exhibit 1 on its face gives WBDI extremely broad rights to enforce WBDI's contractual rights against (*i.e.*, police against) breach by Tesla of its legal compliance obligations or any contractual breach by Tesla. Those rights in WBDI are in section 6.2 of Exhibit 1, which reads:

> 6.2 In the event Client breaches any of the terms or conditions of the Event Letter or these Terms and Conditions, Studio may, in addition to any other rights and remedies available to Studio hereunder or at law or in equity, immediately (i) suspend or cancel activities at the Event, or (ii) cancel the Event in its entirety and these Terms and Conditions at any time thereafter, provided that such breach is material. In such event, the entire License Fee shall be due and payable by Client to Studio.

(Defendants' Exhibit 1 at page 3, paragraph 6.2.)

173. On the face of Exhibit 1, then WBDI had the right to "suspend or cancel activities at the Event," including Musk's keynote speech and the livestream of it, for any breach (material or non-material) of the compliance with laws clause, and could cancel the entire Event altogether for a material breach of the clause.

174. The Event Recording and other available sources about what actually occurred at the Event show that the Event Contract necessarily included livestream rights.

175. The Event Recording and other available sources located by Plaintiff show the Valuable WBDI IP in the Event, as discussed above. No responsible Hollywood studio with sophisticated and experienced legal licensing professionals at its disposal would ever agree to a contract for an event that included both of those foregoing types of terms (valuable studio IP rights and actual content, coupled with worldwide livestream rights), and which event contract did not also include a contractual policing right in favor of the studio to make sure that, whatever specific rights had been granted or not granted to the licensee with

respect to the interaction of those two types of terms, the licensee would not engage in any usage beyond the specific scope of the rights granted.

176. WBDI at least sees itself as a responsible Hollywood studio and it has sophisticated and experienced legal licensing professionals. It would not have and did not agree to the inclusion of the Valuable WBDI IP Provided to Tesla and the worldwide livestream rights, without WBDI giving itself and requiring Tesla to agree to, policing rights for the Event livestream, including the livestream of Musk's keynote speech, that were at least as strong in favor of WBDI as the policing rights visible on the face of Exhibit 1.

177. Pursuant to the reasoning and allegations above, Plaintiff alleges on information and belief, subject to need for discovery, that the Event Contract provided WBDI with sufficient contractual rights to supervise, control and otherwise police Musk and Tesla against actual or potential violation of Alcon's rights exclusive rights under at least the Copyright Act in the course of the Event.

178. ***WBDI Contractual IP Policing Rights Alternative Theory 2:*** *Plaintiff alleges on information and belief, subject to the need for discovery, as an alternative theory, that, to the extent that WBDI failed to secure contractual rights against Tesla to police Musk and Tesla's conduct during the Event against violations of IP law and against Musk and Tesla's breach of contractual obligations, including during the live and livestream of Musk's keynote speech during the Event, that failure was a material departure from and violation of WBDI's own standard practices and policies, to Alcon's reasonably foreseeable and actual prejudice.*

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WBDI Had the Practical Ability to Police Musk's and Tesla's IP Law Compliance and Contractual Compliance During the Event And Actually Exercised It, Just Not With Respect to Alcon's Exclusive Property

179. For live studio lot events that will include a livestream element, and especially if valuable IP of the studio or a third party is also involved in or connected to the event, then all responsible studios as a matter of entertainment industry standards, custom and practice, and the studios' own practices and policies, implement at least one of the following three protocols for policing or "clearing" livestream content so that the livestream does not result in violations of the studios' or any third party's IP rights in valuable IP content:

a. Advance Livestream Script Provision by the Event Licensee. This is a requirement that the licensee provide a script of the planned livestream content reasonably in advance of the commencement of the Event livestream, so that qualified studio professionals can conduct a policing or "clearance" review, without having such policing or clearance review occur in real time.

b. Clearance Sheet and Advance Communication of and Instructions Regarding Same to Production Truck or Video Village Livestream Production and Direction Team. This is information, usually written, setting out the rules of what can and cannot be shown on the publicly performed or public displayed livestream feed, prepared by the studio and provided to the production and direction team who will staff the livestream production truck or video village, along with additional guidance and instruction those teams from the studio on actual implementation of the clearance rules for the livestream. This is all for the purpose of the livestream production and direction team in the production truck or video village being able to engage in real time

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policing or clearance of actual or potential clearance rule violations during the livestream.

c. In-person or Virtual Placement of Studio Clearance Professional(s) with the Livestream Production and Direction Team During the Actual Livestream. By this protocol, a studio clearance attorney, or other experienced clearance professional from the studio, works in real time with the production and direction team in the production truck or video village, to give clearance advice and directions in real time.

180. There is an additional entertainment industry standard custom and practice and policy of responsible studios to the effect that, if a specific higher risk of infringement of specific piece of IP content is identified prior to the livestream, or if a specific expression of concern and/or request for extra vigilance has been communicated about or received from a particular IP rights holder, that identified higher risk, expression of concern or request for extra vigilance will result in the studio implementing extra precautions to guard against the issue, over and above the three protocols above, or as an enhanced implementation of all of them. The extra precautions often take the form of instilling heightened awareness of the issue in expected actual or potential performers on the livestream (*e.g.*, people expected to give keynote speeches) and in the production and direction team in the production team or video village. In essence, the special risk gets "flagged" for attention or put on a "watch list."

181. Plaintiff alleges on information and belief, subject to the need for discovery, that WBDI's standard practices and policies are consistent with entertainment industry standards and customs and practices as described above.

182. The Event Recording, and other sources found and reviewed by Plaintiff as to what actually occurred at the Event, show all of the following:

a. All of the Valuable WBDI IP in the Event was used in the live (in-

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person) aspect of the Event, and was viewed by, accessible to, and enjoyed by in-person Event attendees.

b. None of the Valuable WBDI in the Event was used at all in Musk's keynote speech for the Event.

c. Although the livestream Event Recording continues for about 80 additional minutes after Musk finishes his keynote speech, and although the livestream Event Recording spends substantially all of those 80 minutes documenting the Event and what is happening during it, from numerous different camera viewpoints, none of the Valuable WBDI IP in the Event ever appears on the Event Recording as a focal point for any camera view (with the possible single exception of six seconds nearly at the very end of the Event Recording where the Batmobile is arguably a camera focus).

d. All of the Valuable WBDI in the Event only ever appears on camera in the Event Recording incidentally, arguably requiring active indication for a casual viewer even to notice it.

e. Warner Bros. Pictures' trademarked water tower appears for less than a full second on the Event Recording, and there is the distinct sense by abrupt motion of the camera away from it when it does appear, that the camera operator immediately understood that showing the water tower was prohibited and a mistake. (Event Recording at 0:40:00-0:40:01.)

f. The Event Recording one point includes a substantial portion of a very-well known sound recording of Haddaway performing "What Is Love?" audibly performed on the Event Recording's soundtrack. (Event Recording 0:24:20-0:25:46.) However, the Haddaway sound recording is only partially performed on the Event Recording, before all sound on the Event Recording cuts off for a time, then followed by

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nothing even on the visual feed of the Event Recording or screen saver on the Event Recording for an extended period, until the Event Recording eventually resumes both visual images and a soundtrack. However, after it resumes, for the entire remainder of the Event Recording, the Event Recording soundtrack does not include any readily recognizable popular music, and instead features only generic, almost entirely instrumental, electronic dance music.

183. All of the foregoing, especially the Haddaway sound recording incident identified in 182f above, are telltale signs that active policing clearance efforts had been put in place before the Event, and were effectively being implemented during the entirety of the Event livestream, including during Musk's keynote speech. The signs specifically are that the policing protocols were actually implemented effectively for the Valuable WBDI IP in the Event, and for at least some valuable third party music content, but just not for any of Alcon's exclusively owned property, including not for BR2049's protected elements.

184. Plaintiff makes the allegations in paragraph 185 below, including all subparagraphs, as **WBDI Actual Policing of Musk and Tesla During the Event Alternative Theory 1**:

185. Plaintiff alleges on information and belief, subject to need for discovery, that WBDI had the actual and practical ability to police Musk's and Tesla's IP law compliance and contractual compliance during the Event, including during the live and live-streamed display of Musk's keynote speech, and that WBDI in fact actually did so with respect to separate IP content wholly-owned by WBDI or one or more WBDI subsidiaries, and also with respect to third party IP content; WBDI just either intentionally or negligently failed to do so as to Alcon's exclusively owned property, including BR2049 and K.

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a. **WBDI Actual Policing of Musk and Tesla During the Event Alternative Theory 1.1:** Plaintiff further alleges on information and belief, subject to the need for discovery, as one specific possibility, that what specifically happened under WBDI Actual Policing of Musk and Tesla During the Event Alternative Theory 1 was as follows:

(i). The best practice and standard operating procedure for studios conducting live events where there will be a physical (in-person) aspect, a livestream aspect, and aspects of IP shopping rights and granting of IP licenses and provision of actual IP content by studio, as were all involved here, and WBDI's actual standard practice and policy, is that the livestream terms must be finalized and understood before finalization of the IP terms. Otherwise, if the IP shopping is conducted and IP license agreements are finalized prior to understanding what the livestream rights are or are not (*e.g.*, whether there will or will not be any livestreaming at all, and for what territories), the IP licenses and clearances risk being incorrect and potentially useless. Different permutations of livestream possibilities require different IP clearances, and on case-by-case basis depending on the particular IP in question.

(ii). There was a mistake made by WBDI or Tesla, such that for the Event, whether or not previously agreed, the actual livestream terms in the Event Contract were not communicated to WBDI's licensing and clearance professionals tasked with handling the IP shopping and IP licensing issues, until <u>after</u> the IP work had been substantially completed, and not until relatively near the day of the Event.

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(iii). As a result, an emergency situation arose where the Valuable WBDI IP in the Event, and any other IP from third parties, had not been properly cleared for belatedly communicated livestream terms. WBDI's ability to implement all or some of its usual clearance and policing protocols was also impaired.

(iv). If the Event partners to WBDI had been someone less important than Tesla and Musk, WBDI might have communicated that there could be no livestream, or that the scope of the livestream would have to be sharply restricted.

(v). Here, though, WBDI allowed the livestream to go forward, and, as an emergency clearance fix or patch, shortly before the commencement of the Event, WBDI communicated directions to Tesla, and expected performers, including Musk, and the production and direction team in the production truck or video village, that the livestream could go forward, but that Tesla, and all performers, and the production and direction team, were all to understand and take steps such that none of the Valuable WBDI IP in the Event was to be featured in the keynote speech, or publicly performed or displayed on the livestream feed, except incidentally, because some or all of it was not properly cleared for such uses.

(vi). Further, although WBDI easily could have modified or supplemented the above emergency fix or patch instruction expressly to include BR2049 protected elements and other Alcon exclusive-owned propertyas subject to the same restrictions, WBDI intentionally or negligently failed to do so.

186. ***WBDI Actual Policing of Musk and Tesla During the Event***

Alternative Theory 2: *Plaintiff alleges on information and belief, subject to the need for discovery, as an alternative theory, that, to the extent that WBDI failed to structure the Event or Event Contract to provide WBDI with actual ability to police violation by Tesla or Musk of IP rights of either WBDI or its subsidiaries or any third party, or if WBDI had such actual ability but failed actually to exercise it, such failure or failures was a material departure from and violation of WBDI's own standard practices and policies, to Alcon's reasonably foreseeable and actual prejudice.*

FIRST CLAIM FOR RELIEF

***Direct Copyright Infringement in Violation of 17 U.S.C. § 501,* et seq.**

Against Defendants WBDI, Tesla and Musk

187. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and in each paragraph of this SAC hereafter, as if set forth herein in full.

188. To the extent any of the allegations or theories in this First Claim for Relief are inconsistent with other allegations or theories pled in this SAC, they are pled in the alternative.

189. Plaintiff is the author and copyright owner of the motion picture "Blade Runner 2049," registered with the United States Copyright Office on October 6, 2017, registration number PA0002056792. That is the registered infringed work.

190. Defendants Tesla and Musk created at least two infringing works: 1) Exhibit C; and 2) the Event Recording, in the record as Exhibit 2 to the February 4, 2025 Omnibus Declaration of Chris Marchese) ("Event Recording"). The specifically infringing portions of the Event Recording are the approximately 11

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seconds at the opening of the presentation where Exhibit C is displayed and Musk's accompanying voiceover.

191. Musk and Tesla: Defendant Tesla and Musk are direct infringers, in that they violated Plaintiff's exclusive rights in BR2049 in each of the following ways, with the conduct alleged constituting both actual copying and unlawful appropriation in each instance. Defendant WBDI: is a direct infringer in that the violation of Alcon's public display rights as alleged in this SAC and paragraph 191f below was conducted on, and transmitted over, WBDI-owned or WBDI-controlled property, infrastructure and systems (specifically including WBDI livestreaming infrastructure systems), and WBDI engaged in volitional conduct as discussed paragraphs 192-193 below:

a. Violation of Reproduction Right, 17 U.S.C. § 106(1). Defendants Musk and Tesla infringed this exclusive right of Alcon by the conduct alleged in paragraphs 101, 101a and 101b in this SAC: literal copying of the entirety of BR2049 or of protectable elements of BR2049 such as still images like those in Exhibits A and B, or a partial videorecording of BR2049, to an AI image generator. These allegations are made on the same information and belief and alternative pleading theory basis as set forth in paragraphs 101, 101a and 101b. (**Exhibit C AI Generation Process Alternative Theory 1**.)

b. Violation of Reproduction Right, 17 U.S.C. § 106(1). Defendants Musk and Tesla infringed this exclusive right of Alcon by the conduct alleged in paragraphs 101 and 101c in this FAC: literal copying of another work (a "licensed image") as part of the AI image generation process, but the process nonetheless involved an AI image generator engaging in literal copying of the entirety of BR2049 or of protectable elements of BR2049 such as still images like those in Exhibits A and B,

or a partial videorecording of BR2049, to an AI image generator, and put into the image generator by Musk and Tesla, or persons under their direction and control. These allegations are made on the same information and belief and alternative pleading theory basis as set forth in paragraphs 101 and 101c. (***Exhibit C AI Generation Process Alternative Theory 2***.)

c. Violation of Reproduction Right, 17 U.S.C. § 106(1). Under the law of the Ninth Circuit as usually interpreted, all of the violations of Alcon's right to prepare derivative works are also necessarily violations of Alcon's reproduction rights.

d. Violation of Right to Prepare Derivative Works, 17 U.S.C. § 106(2). The Exhibit C image is an unauthorized derivative work of BR2049, which impermissibly incorporates at least the following protected elements of BR2049 (as the protected elements are detailed in Paragraph 13 of Appendix 2 of this SAC): i) Iconic Still Images which Evoke Qualitatively Important Scenes or Sequences of BR2049; ii) the character K; iii) Urgent Human-AI Decision Point Theme; iv) Mood of Anxiety, Fear and Urgency, and specifically about the Human-AI Decision Point; v) Setting; and vi) Selection and Arrangement of elements, as alleged in paragraph 13f of Appendix 2 of this SAC. See paragraphs 102-122 of this SAC and Exhibits A-D. Alcon further alleges that the Exhibit C image must be treated as an unauthorized derivative work, because Musk by his commentary during the Event and in the Event Recording effectively represents to the audience that it is either itself a protected still image of BR2049, or a derivative work of BR2049, and that Musk and Tesla should therefore be estopped to contend otherwise. *Id.*

e. Violation of Right to Prepare Derivative Works, 17 U.S.C. § 106(2). The Event Recording is an unauthorized derivative work of BR2049, which impermissibly incorporates at least the following protected elements of BR2049 (as the protected elements are detailed in Paragraph 13 of Appendix 2 of this SAC): i) Iconic Still Images which Evoke Qualitatively Important Scenes or Sequences of BR2049; ii) the character K; iii) Urgent Human-AI Decision Point Theme; iv) Mood of Anxiety, Fear and Urgency, and specifically about the Human-AI Decision Point; v) Setting; and vi) Selection and Arrangement of elements, as alleged in paragraph 13f of Appendix 2 of this SAC. See paragraphs 102-122 of this SAC and Exhibits A-D. Alcon further alleges that the Exhibit C image must be treated as an unauthorized derivative work, because Musk by his commentary during the Event and in the Event Recording effectively represents to the audience that it is either itself a protected still image of BR2049, or a derivative work of BR2049, and that Musk and Tesla should therefore be estopped to contend otherwise. *Id.*

f. Violation of Right to Display Work Publicly, 17 U.S.C. § 106(5). The display of Exhibit image both i) at the live Event and ii) during the livestream of the Event in the United States violated Alcon's public display rights in BR2049 and its protected elements, and all three Defendants have direct infringement liability. Musk and Tesla actively conducted the event resulting in the display, paragraphs 102-122, and the display occurred over WBDI-owned or -controlled systems, to both a large in-person audience, and also to a worldwide audience, including viewers in the United States. SAC, paragraph 109.

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192. WBDI engaged in volitional conduct as that term is used in the context of infringement of the 17 U.S.C. § 106(5) public display right. The volitional conduct requirement is a term of art that means sufficient facts for a finding of proximate cause, meaning that the defendant was a direct cause of the infringement pursuant to the way that proximate cause is used in the traditional tort context. Within that framework, at least in the context of online servers and similar situations, volitional conduct may be found where the defendant did any of the following: (1) exercised control; (2) selected any material for upload or storage; or (3) instigated any copying, storage or distribution.

193. Here, WBDI was actively involved and either exercised control and/or instigated copying, storage or distribution of the infringed work, which here is BR2049. WBDI held itself out to Musk and Tesla as having rights that WBDI does not have, (SAC, ¶¶ 32-36), led Musk and Tesla to believe until very late in the process that Musk and Tesla would be allowed to use Exhibit A in the Event pursuant to a license from Warner Bros. Pictures, (SAC, ¶¶ 59-78), caused Warner Bros. Pictures to actually provide a high resolution image of protected elements of BR2049 to Musk and Tesla, (SAC, ¶¶ 64-65), and also engaged in a combination of intentional or negligent representations combined with silence (failure to make corrective speech) that resulted in Musk and Tesla potentially understanding they had U.S. copyright permission to use BR2049 elements, or effective immunity for BR2049 infringement claims under U.S. law. (SAC, ¶¶ 92-95.) In addition, given Musk's and Tesla's history with the BR2049 property and how they use it for product reveals, (SAC, ¶¶ 32-36), and Musk's disdain for intellectual property law, (SAC, ¶¶ 27-31), letting Musk and Tesla contract for and conduct the Event while providing content for them, (SAC, ¶¶ 47-54), combined with causing them to anticipate being able to use BR2049 in Musk's keynote warrants a finding of proximate cause, including under the instigation prong. Plaintiff also contends that

WBDI's intentional or negligent failure actively to police Musk and Tesla, especially after receiving the Alcon Event Directions to WBDI and leading Alcon to believe that WBDI would follow them also contributes to the conclusion that a finding of sufficient active involvement to warrant a proximate cause finding of volitional conduct exists. (SAC, ¶¶ 88-92, 98, 155-177, 179-185.)

194. Alcon alleges and contends that where substantial similarity analysis is required, Defendants' acts of infringement above as to the character K are subject to the "story being told," distinct delineation, and/or bodily appropriation tests applicable to characters, and that the character K satisfies them. Alcon also stands by and advances its derivative work reference leveraging theory articulated in Alcon's Memorandum of Points and Authorities in Opposition to Musk and Tesla's Motion to Dismiss Plaintiff's First Amended Complaint. Alcon believes that theory is within the parameters of existing copyright case law, but to the extent it is not, Alcon advances it as a novel theory. Alcon also advances the theory that Musk and Tesla's intentions to infringe must be taken into account in favor of substantial similarity findings and analysis. Alcon also believes that is within the parameters of existing case law, but to the extent it is not, Alcon advances it as a novel theory.

195. The foregoing acts of Defendants WBDI, Tesla and Musk infringed upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce, create derivative works, display, distribute and publicly perform BR2049 and its protectible elements. Such actions and conduct constitute copyright infringement in violation of 17 U.S.C. § 501, *et seq.*

196. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and registered the exclusive rights and privileges in and to the copyrights of the above-referenced work in accordance with 17 U.S.C. § 408.

197. Plaintiff suffered damages as a result of Defendants' unauthorized use of BR2049 and its protectible elements.

198. Plaintiff is entitled to temporary, preliminary and/or permanent injunctive relief, pursuant to 17 U.S.C. § 502(a).

199. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to impoundment of all materials used to achieve the infringement, and records documenting Defendants' exploitation of their infringements, including without limitation all materials used by Defendants or any image generation tool employed by them to generate the Exhibit C Image.

200. Plaintiff is entitled to recover and seeks its actual damages and any additional profits of Defendants WBDI, Tesla and Musk attributable to the infringements, under 17 U.S.C. § 504(b).

201. Plaintiff also is entitled to elect to recover and seek statutory damages under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than $750 or more than $30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and believes and on that basis alleges that Defendants' acts of copyright infringement, as alleged above, were willful, intentional, and malicious. Such acts subject Defendants to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to $150,000 per infringement.

202. Within the time permitted by law, Plaintiff will make its election between actual damages and profit disgorgement, or statutory damages.

203. Plaintiff also is entitled to a discretionary award of attorney fees under 17 U.S.C. § 505.

204. Plaintiff seeks or reserves the right to seek any or all of the above forms of relief, in addition to prejudgment interest to the extent legally available and Plaintiff's costs.

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SECOND CLAIM FOR RELIEF

***Vicarious Copyright Infringement in Violation of 17 U.S.C. § 501,* et seq.**

Against Defendants WBDI, Tesla and Musk

205. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and each paragraph of this SAC hereafter, as if set forth herein in full.

206. To the extent any of the allegations or theories in this Second Claim for Relief are inconsistent with other allegations or theories pled in this SAC, they are pled in the alternative.

207. If Defendants WBDI, Tesla and Musk are not each liable as direct infringers of BR2049, they are secondarily liable for the infringements directly committed by individual agents, contractors, or other infringers presently unknown (the "Direct Infringers") under the vicarious infringement doctrine.

208. Defendants Musk and Tesla. As to Musk and Tesla, if they are not themselves the direct infringers, it appears highly likely that they are the masters or employers of the direct infringers, or otherwise had the right and ability to supervise and control the Direct infringers, and that the Direct Infringers infringed in the course and scope of their work for Musk and Tesla. (SAC, ¶¶ 100-122.) It thus appears highly likely that Musk and Tesla would have liability under traditional respondeat superior doctrine, and Alcon pleads that they do. The case law on vicarious copyright infringement appears less than entirely clear on whether such traditional theory respondeat superior vicarious liability for copyright infringement is to be pled as a subset of direct infringement, or under a vicarious infringement claim. Alcon believes that its direct infringement allegations against Musk and Tesla cover the traditional respondeat superior theory, but in the event that theory is more properly placed in a vicarious infringement claim, Alcon pleads it here. Alcon does not here plead as against Musk and Tesla the "direct financial

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benefit" and "right and ability to supervise" vicarious infringement theory crafted for cases not within traditional respondeat superior liability.

209. Defendant WBDI. WBDI had the right and ability to supervise the infringing activity that all the Direct Infringers committed. (SAC, ¶¶ 155-186.) They were also notice actively to exercise their supervisorial rights and powers, both because Musk and Tesla are inherently high risks to infringe against BR2049 in particular, (SAC, ¶¶ 27-31), and because Alcon put WBDI on notice with the Alcon Event Directions to WBDI and WBDI intentionally or negligently failed to follow them, after indicated to Alcon that WBDI would perform them. (SAC, ¶¶ 88-92, 98.)

210. WBDI obtained a qualifying level of direct financial benefit from Musk and Tesla and their infringing conduct, and the opportunity to infringe BR2049 was a substantial part of the draw to Musk and Tesla for the monies they paid to WBDI for the overall Event. (SAC, ¶¶ 32-36, 47-54.)

211. Alcon also alleges and contends that WBDI took enough actions to pursue the Exhibit A "clip licensing" plan such that, although it was not ultimately consummated, it went far enough that it should be treated as satisfying the draw and directly financial benefit analyses of vicarious copyright infringement law. WBDI held itself out to Musk and Tesla as having rights that WBDI does not have, (SAC, ¶¶ 32-36), led Musk and Tesla to believe until very late in the process that Musk and Tesla would be allowed to use Exhibit A in the Event pursuant to a license from Warner Bros. Pictures, (SAC, ¶¶ 59-78), caused Warner Bros. Pictures to actually provide a high resolution image of protected elements of BR2049 to Musk and Tesla, (SAC, ¶¶ 64-65), set up or proposed an associated payment, (SAC, ¶ 63), and also engaged in a combination of intentional or negligent representations combined with silence (failure to make corrective speech) that resulted in Musk and Tesla potentially understanding they had U.S. copyright

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permission to use BR2049 elements, or effective immunity for BR2049 infringement claims under U.S. law. (SAC, ¶¶ 92-95.)

212. Alcon contends that the Ninth Circuit case law on the directness of the tie required between the financial benefit and the infringement is strict enough that it is possible that even the above facts would not be found close enough. To the extent that is the case, Alcon contends and advances that the relationship here between WBDI and Musk and Tesla is close enough to cases like *Fonovisa v. Cherry Auction, Inc.*, 76 F.3d 259 (1996), and the underlying fundamental situations and reasons that led to the vicarious infringement doctrine in the first place, that vicarious liability should be imposed on WBDI, even if that might require a relaxation of some Ninth Circuit law on the strictness of the link required between infringement and direct financial benefit.

213. Accordingly, all Defendants had an incentive to permit infringement by the Direct Infringers.

214. The foregoing acts of Defendants WBDI, Tesla and Musk infringed upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce, create derivative works, and publicly display BR2049 and its protectible elements. Such actions and conduct constitute copyright infringement in violation of 17 U.S.C. § 501, *et seq.*

215. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and registered the exclusive rights and privileges in and to the copyrights of the above-referenced work in accordance with 17 U.S.C. § 408.

216. Plaintiff suffered damages as a result of Defendants' unauthorized use of BR2049 and its protectible elements.

217. Plaintiff is entitled to temporary, preliminary and/or permanent injunctive relief, pursuant to 17 U.S.C. § 502(a).

218. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to

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impoundment of all materials used to achieve and records documenting Defendants' exploitation of, their infringements, including without limitation all materials used by Defendants or any image generation tool employed by them to generate the Exhibit C Image.

219. Plaintiff is entitled to recover and seeks its actual damages and any additional profits of Defendants WBDI, Tesla and Musk attributable to the infringements, under 17 U.S.C. § 504(b).

220. Plaintiff also is entitled to elect to recover and seeks statutory damages under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than $750 or more than $30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and believes and on that basis alleges that Defendants' acts of copyright infringement, as alleged above, were willful, intentional, and malicious. Such acts subject Defendants to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to $150,000 per infringement.

221. Within the time permitted by law, plaintiff will make its election between actual damages and profit disgorgement, or statutory damages.

222. Plaintiff also is entitled to a discretionary award of attorney fees under 17 U.S.C. § 505.

223. Plaintiff seeks or reserves the right to seek any or all of the above forms of relief, in addition to prejudgment interest to the extent legally available and Plaintiff's costs.

THIRD CLAIM FOR RELIEF

***Contributory Copyright Infringement in Violation of 17 U.S.C. § 501,* et seq.**

Against Defendants WBDI, Tesla and Musk

224. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and each paragraph of this SAC hereafter, as if set forth herein in full.

225. To the extent any of the allegations or theories in this Third Claim for Relief are inconsistent with other allegations or theories pled in this Complaint, they are pled in the alternative.

226. If Defendants WBDI, Tesla and Musk are not individually liable as direct infringers of BR2049, they are secondarily liable for the infringements committed by the Direct Infringers under the contributory infringement doctrine.

227. Defendants WBDI, Tesla and Musk had, or should have had, knowledge of the infringements of the Direct Infringers.

228. Tesla and Musk. Tesla and Musk plainly intentionally included the Exhibit C image in the October 10, 2024 Tesla presentation, and they could plainly see that it was not an actual still image from BR2049, but rather a stylized copy likely to found infringing. Under at least one of Alcon's alternative theories, they also all knew that Alcon had refused permission to use BR2049 or any of its elements in the presentation or in connection with it.

229. WBDI. WBDI was conducting clearance for the Event and either knew or should have known of the infringing conduct by the Direct Infringers. WBDI was plainly on notice pursuant to the Alcon Event Directions to WBDI to check on and actively police Musk and Tesla against infringement of BR2049, but intentionally or negligently failed to do so when it could, meeting at least a should have known or willful blindness standard of knowledge, even if WBDI did not actually know about Musk's and Tesla's infringement before and at the time of the Event. Furthermore, regardless, Plaintiff alleges on information and belief, subject to the need for discovery, that WBDI definitely knew when it saw Musk's keynote speech that his and Tesla's actions were infringing, or, at latest, on October 16, 2024 when Alcon complained.

230. Defendants WBDI, Tesla and Musk either materially contributed to or induced the infringements. Tesla and Musk materially contributed to the direct

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infringements by including the Exhibit C image in Musk's presentation. Plaintiff is informed and believes and on that basis and subject to the need for discovery alleges that Musk was determined specifically to reference BR2049 and an image from it in the presentation, and his determination induced the direct infringements by the Direct Infringers of creating the infringing Exhibit C image. Defendant WBDI materially contributed to the direct infringements at the very least in that the event display, distribution and public performance aspects of the infringement occurred at WBDI's Burbank, California studio lot, and with the use and support of WBDI's facilities and technology.

231. WBDI also materially contributed to, induced, or encouraged infringement by WBDI holding itself out to Musk and Tesla as having rights that WBDI does not have, (SAC, ¶¶ 32-36), led Musk and Tesla to believe until very late in the process that Musk and Tesla would be allowed to use Exhibit A in the Event pursuant to a license from Warner Bros. Pictures, (SAC, ¶¶ 59-78), caused Warner Bros. Pictures to actually provide a high resolution image of protected elements of BR2049 to Musk and Tesla, (SAC, ¶¶ 64-65), and also engaged in a combination of intentional or negligent representations combined with silence (failure to make corrective speech) that resulted in Musk and Tesla potentially understanding they had U.S. copyright permission to use BR2049 elements, or effective immunity for BR2049 infringement claims under U.S. law. (SAC, ¶¶ 92-95.) In addition, given Musk's and Tesla's history with the BR2049 property and how they use it for product reveals, (SAC, ¶¶ 32-36), and Musk's disdain for intellectual property law, (SAC, ¶¶ 27-31), letting Musk and Tesla contract for and conduct the Event while providing content for them, (SAC, ¶¶ 47-54), combined with causing them to anticipate being able to use BR2049 in Musk's keynote warrants a finding of encouragement or inducement.

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232. Furthermore, once WBDI knew of the infringement, which at latest was when Alcon complained on October 16, 2024, WBDI by its silence and failure openly to denounce Musk and Tesla's conduct as infringing has effectively encouraged Musk and Tesla in not remediating, and WBDI is thereby lending support to and/or ratifying the conduct of Musk and Tesla.

233. The foregoing acts of Defendants WBDI, Tesla and Musk infringed upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce, create derivative works, display, distribute and publicly perform BR2049 and its protectible elements. Such actions and conduct constitute copyright infringement in violation of 17 U.S.C. § 501, *et seq.*

234. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and registered the exclusive rights and privileges in and to the copyrights of the above-referenced work in accordance with 17 U.S.C. § 408.

235. Plaintiff suffered damages as a result of Defendants' unauthorized use of BR2049 and its protectible elements.

236. Plaintiff is entitled to temporary, preliminary and/or permanent injunctive relief, pursuant to 17 U.S.C. § 502(a).

237. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to impoundment of all materials used to achieve and records documenting Defendants' exploitation of, their infringements, including without limitation all materials used by Defendants or any image generation tool employed by them to generate the Exhibit C Image.

238. Plaintiff is entitled to recover and seeks its actual damages and any additional profits of Defendants WBDI, Tesla and Musk attributable to the infringements, under 17 U.S.C. § 504(b).

239. Plaintiff also is entitled to elect to recover and seeks statutory damages under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than $750 or more

than $30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and believes and on that basis alleges that Defendants' acts of copyright infringement, as alleged above, were willful, intentional, and malicious. Such acts subject Defendants to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to $150,000 per infringement.

240. Within the time permitted by law, Plaintiff will make its election between actual damages and profit disgorgement, or statutory damages.

241. Plaintiff also is entitled to a discretionary award of attorney fees under 17 U.S.C. § 505.

242. Plaintiff seeks or reserves the right to seek any or all of the above forms of relief, in addition to prejudgment interest to the event legally available and Plaintiff's costs.

FOURTH CLAIM FOR RELIEF

False Affiliation and/or False Endorsement

in Violation of 15 U.S.C. § 1125(a)(1)(A) against Defendants Musk and Tesla

243. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and each paragraph of this SAC hereafter, as if set forth herein in full.

244. To the extent any of the allegations or theories in this Fourth Claim for Relief are inconsistent with other allegations or theories pled in this SAC, they are pled in the alternative.

245. Alcon owns the marks, trade dress and other Lanham Act-protectable interests identified in paragraphs 137-154 (together, "Alcon's Marks"), and has owned them continuously since prior to 2024.

246. Defendants Tesla and Musk have engaged in false representations which are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Tesla and Musk with Alcon or as to the

sponsorship or approval of Tesla's or Musk's goods, services, or commercial activities by Alcon.

247. Plaintiff alleges that Tesla and Musk engaged in the following specific conduct that together constituted false statements that constituted false representations of the type described in the foregoing paragraph 246: the conduct and statements made by Tesla and Musk at the October 10, 2024 Tesla-WBDI event as described in paragraphs 102-124 above, and as further distributed and made available to consumers thereafter by the wide dissemination to and ongoing presence and availability of, the Event Recording to consumers.

248. As alleged in detail in paragraphs 102-124 above, in the about eleven seconds of Event presentation on October 10, 2024 which included the Exhibit C image and Musk's accompanying voiceover, Musk and Tesla by their conduct used or evoked all of the following protectable Lanham Act interest of Alcon: a) Alcon's BLADE RUNNER 2049 mark as it is described in paragraph 137; b) Alcon's BLADE RUNNER mark as it is described in paragraph 138; b) Alcon's mark or protectable goodwill in the character K as described in paragraphs 140-142; c) Alcon's protectable trade dress in iconic or recognizable still images from BR2049 such as Exhibit A and the Exhibit B images, specifically generating the Exhibit C Image and displaying it with accompanying voiceover by Musk such that it appeared to be either an actual still image from BR2049's Las Vegas Sequence, or a lightly-stylized illustration of K about to enter the irradiated Las Vegas at or near the beginning of the sequence, paragraphs 143-148; and d) a protectable combination as alleged in paragraph 148.

249. Tesla and Musk used Alcon's marks and trade dress to advertise cars and a car company, including in the sense of conveying an association between Tesla and its Robotaxi and Alcon, BR2049 and K, which is the type of association that Alcon licenses, and that consumers and other customers expect to be a licensed

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association. The Event presentation was for all intents and purposes a long livestreamed advertisement for Tesla and its products, and it reached a substantial set of the general consuming public in the United States, and of Alcon's potential automobile brand partners on BR2049. Although Alcon is not a competitor of Tesla in the car business (it is true that Alcon does not itself sell cars), Alcon is in fact in that business of licensing the BR2049 marks and trade dress to car makers for advertising affiliation, and that is sufficiently in the zone of interests for Alcon to be a proper claimant.

250. Tesla's and Musk's unauthorized use of, and references, to Alcon's BR2049 marks and secondary meaning elements had and have the effect of falsely representing that Tesla's and Musk's goods and services are licensed, sponsored, endorsed, or otherwise authorized by Alcon, and/or is at the very least misleading as to these points, and in a business market (automobile brand marketing partnerships on BR2049) in which Alcon is actually an established player.

251. Alcon also alleges that Tesla's and Musk's conduct includes explicitly misleading statements, expressions or conduct, within the meaning of *Gordon v. Drape Creative, Inc.*, 909 F.3d 257 (9th Cir. 2018), if the test of *Rogers v. Grimaldi,* 875 F.2d 994 (2d Cir. 1989) were applied to the Lanham Act claim here, which Alcon contends would be improper. (SAC, ¶ 124.) Alcon advances and maintains all of the arguments against application of Rogers v. Grimaldi that Alcon's counsel set forth on April 7, 2025 at the oral argument opposing Defendants' Motions to Dismiss Plaintiff's First Amended Complaint.

252. Tesla's and Musk's conduct is likely to cause confusion or mistake and to deceive consumers and/or Alcon's relevant actual and potential business partners as to the endorsement, sponsorship, affiliation, connection, or association of Alcon with Tesla's and Musk's services and products. In this context, Alcon's relevant business partners include automotive brands with potential interest in

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brand affiliations with BR2049, including without limitation with the BR2049-based *Blade Runner 2099* television series currently in production by Alcon. They also include business partners in the Hollywood talent pool market where Alcon is active on an everyday basis, and which Hollywood talent pool market generally is less likely to deal with Alcon, or parts of the market may be, if they believe or are confused as to whether, Alcon has an affiliation with Tesla or Musk.

253. Tesla and Musk engaged in the above conduct intentionally and in bad faith, conspiring to and then executing a fraudulent scheme falsely to create a purported justification or excuse to feature Alcon's BR2049 prominently at the outset of Tesla's and Musk's Robotaxi or cybercab product reveal presentation, and without paying Alcon any fee for doing so, for the purpose of using BR2049's goodwill to increase the interest level and cache of the new Tesla product pitch and product.

254. All of the foregoing false endorsement uses of Alcon's BR2049 marks and goodwill were commercial speech, and not subject to any defense predicated on the nature of the use being a non-commercial use or non-commercial speech. Specifically, some or all of Tesla's and Musk's speech was either (a) core commercial speech in that it proposes a commercial transaction, or in the alternative, (b) was nonetheless commercial for purposes of false endorsement law and Plaintiff's claims herein, in that the communications were advertisements, made reference to a specific product, and the speaker had an economic motivation for the communication, all within the meaning of *Bolger v. Youngs Drugs Products Corp.*, 463 U.S. 60 (1983) and its progeny.

255. As a direct and proximate result of Tesla's and Musk's wrongful actions, Alcon has suffered damages in an amount to be proven at trial, but in excess of the jurisdictional minimum.

256. Alcon further alleges that Tesla's and Musk's unauthorized use of

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Alcon's BR2049 marks and secondary meaning elements will continue unless and until Tesla and Musk are enjoined. Alcon has no adequate remedy at law to prevent Tesla and Musk from continuing to wrongfully violate Alcon's rights, and Alcon will suffer irreparable harm unless Defendants are enjoined from continuing their wrongful conduct.

257. Defendants Musk and Tesla both had actual knowledge of the wrongfulness of their conduct and the high probability that such acts would cause injury and/or damage to Plaintiff. Despite their knowledge, Defendants Musk and Tesla intentionally pursued their course of conduct, resulting in injury or damage to Plaintiff.

Prayer for Relief

WHEREFORE, Plaintiff prays judgment be entered in its favor and against Defendants, and each of them, as follows:

1. On the First Claim for Relief for Copyright Infringement:
   a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying, distributing, selling, or offering to sell BR2049 or protectible elements thereof in connection with Tesla or Musk, or making derivative works thereof for such purposes.
   b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Exhibit C Image and Event Recording and underlying materials used in violation of Plaintiff's copyrights—including digital copies or any other means by which they could be used again by the Defendants without Plaintiff's authorization—as well as all related records and documents.
   c. For actual damages and all profits that Defendants derived from the unauthorized use of BR2049 or, where applicable and at Plaintiff's

election, statutory damages.

d. For an award of attorneys' fees.

e. For an award of pre-judgment interest as allowed by law.

f. For costs of suit.

g. For such further relief as the Court deems just and proper.

2. On the Second Claim for Relief for Vicarious Copyright Infringement:

a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying, distributing, selling, or offering to sell BR2049 or protectible elements thereof in connection with Tesla or Musk, or making derivative works thereof for such purposes.

b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Exhibit C image, Event Recording, and underlying materials used in violation of Plaintiff's copyrights—including digital copies or any other means by which they could be used again by the Defendants without Plaintiff's authorization—as well as all related records and documents.

c. For actual damages and all profits that Defendants derived from the unauthorized use of BR2049 or, where applicable and at Plaintiff's election, statutory damages.

d. For an award of attorneys' fees.

e. For an award of pre-judgment interest as allowed by law.

f. For costs of suit.

g. For such further relief as the Court deems just and proper.

3. On the Third Claim for Relief for Contributory Copyright Infringement:

a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying,

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distributing, selling, or offering to sell BR2049 or protectible elements thereof in connection with Tesla or Musk, or making derivative works thereof for such purposes.

b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Exhibit C image, Event Recording, and underlying materials used in violation of Plaintiff's copyrights—including digital copies or any other means by which they could be used again by the Defendants without Plaintiff's authorization—as well as all related records and documents.

c. For actual damages and all profits that Defendants derived from the unauthorized use of BR2049 or, where applicable and at Plaintiff's election, statutory damages.

d. For an award of attorneys' fees.

e. For an award of pre-judgment interest as allowed by law.

f. For costs of suit.

g. For such further relief as the Court deems just and proper.

4. On the Fourth Claim for Relief (False Endorsement in Violation of 15 U.S.C. § 1125(a)(1)(A))

a. For injunctive relief, including without limitation for an order mandating that Defendants Musk and Tesla cease any further promotional or advertising use of BR2049; that Defendants place a corrective notice or disclaimer on the Event Recording and all copies thereof putting viewers on notice that the portions of the event referencing BR2049 false and misleading and that BR2049 and Alcon have no relationship or affiliation with Tesla, Musk or the cybercab product; and an order mandating that Musk and Tesla cease to distribute any further copies of the Event Recording or event livestream

that contains the BR2049 references and Exhibit C.

b. For compensatory damages;

c. Defendants' profits;

d. Attorney fees;

e. Costs of suit;

f. Prejudgment Interest; and

g. Such other and further relief as the Court may deem just and proper.

DATED: June 16, 2025

ANDERSON YEH PC
Edward M. Anderson
Regina Yeh

By _____
Attorneys for Plaintiff
ALCON ENTERTAINMENT, LLC

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, on its claims against Defendants Tesla, Inc. ("Tesla"), Elon Musk ("Musk"), and Warner Bros. Discovery, Inc. ("WBDI"), Plaintiff Alcon Entertainment, LLC hereby demands a trial by jury of all matters triable to a jury.

DATED: June 16, 2025

ANDERSON YEH PC
Edward M. Anderson
Regina Yeh
By _____
Attorneys for Plaintiff
ALCON ENTERTAINMENT, LLC

Exhibit 37

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Additional counsel listed on signature page

Attorneys for Defendant
Warner Bros. Discovery, Inc.

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALCON ENTERTAINMENT, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TESLA, INC., a Texas Corporation; ELON MUSK, an individual; WARNER BROS. DISCOVERY, INC., a Delaware Corporation,

Defendants.

Case No. 2:24-cv-09033-GW-RAO

DEFENDANT WARNER BROS. DISCOVERY, INC.'S NOTICE OF MOTION AND MOTION TO DISMISS SECOND AMENDED COMPLAINT

Hearing Date: September 11, 2025
Hearing Time: 8:30 a.m.
Courtroom: 9D
Judge: Hon. George H. Wu

TO PLAINTIFF AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on September 11, 2025 at 8:30 a.m., or as soon thereafter as the matter may be heard in the United States District Court, Central District of California, Western Division, at 350 West 1st Street, Los Angeles, California 90012, Courtroom 9D, 9th Floor, before the Honorable George H. Wu, Defendant Warner Bros. Discovery, Inc. ("WBDI") will move, and hereby does move, to dismiss with prejudice the first (Direct Copyright Infringement), second (Vicarious Copyright Infringement), and third (Contributory Copyright Infringement) claims for relief in the Second Amended Complaint.

This motion is made pursuant to Fed. R. Civ. P. 8 and 41(b) and the Local Rules applicable thereto. This motion is based on this notice of motion and motion, the accompanying memorandum of points and authorities, the pleadings on file in this action, and on such other written or oral argument or evidence as may be presented at or before the time this motion is taken under submission.

This motion is made following the conference of counsel pursuant to Local Rule 7-3, which took place on July 23, 2025. Plaintiff confirmed it will oppose the motion.

Dated: July 30, 2025

FISH & RICHARDSON P.C.

/s/ Kristen McCallion

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Exhibit 38

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALCON ENTERTAINMENT, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TESLA, INC., a Texas Corporation; ELON MUSK, an individual; WARNER BROS. DISCOVERY, INC., a Delaware Corporation;

Defendants.

CASE NO. 2:24-CV-09033-GW-RAO

PLAINTIFF ALCON ENTERTAINMENT, LLC'S CONSOLIDATED MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO (1) DEFENDANTS TESLA, INC.'S AND ELON MUSK'S MOTION TO DISMISS SECOND AMENDED COMPLAINT; AND (2) DEFENDANT WARNER BROS. DISCOVERY, INC.'S MOTION TO DISMISS SECOND AMENDED COMPLAINT

Hearing Date: September 11, 2025
Time: 8:30 a.m.
Courtroom: 9D
Judicial Officer: Hon. George H. Wu

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I. INTRODUCTION

Plaintiff Alcon Entertainment, LLC ("Plaintiff" or "Alcon") opposes the motions to dismiss Alcon's Second Amended Complaint ("SAC") filed respectively by (1) Defendants Tesla, Inc. ("Tesla") and Elon Musk ("Musk") ("M&T MTD"), and (2) Defendant Warner Bros. Discovery, Inc. ("WBDI") ("WBDI MTD").

II. UNDERLYING DISPUTE

Alcon is a motion picture producer and the producer of the motion picture "Blade Runner 2049" ("BR2049"), which is a sequel to the 1982 motion picture "Blade Runner" ("1982 Picture"). Alcon claims exclusive copyright rights in BR2049 and Lanham Act rights in certain associated elements. Alcon also claims broad exclusive copyright rights in derivative works of the 1982 Picture, and non-exclusive Lanham Act rights in the word mark "Blade Runner." Alcon contends that Musk has a history of exploiting elements of both the 1982 Picture and BR2049 for Tesla marketing, and without any Alcon permissions. Alcon further contends that Defendants all partnered together for a Tesla product reveal event held on October 10, 2024 at WBDI's Burbank, California motion picture and television studio lot (the "Event"), and that in the course of the Event, Musk employed an artificial intelligence ("AI")-generated image in his keynote speech in a way that violated Alcon's rights in BR2049 under the United States Copyright Act and the Lanham Act (with the Lanham Act claims also including alleged violations of Alcon's rights in the "Blade Runner" word mark). Plaintiff further contends that WBDI had sufficient involvement that WBDI is also liable to Alcon under copyright law theories for infringement of Alcon's copyright rights in BR2049.

III. PROCEDURAL SUMMARY

Alcon filed its initial Complaint on October 21, 2024, alleging four claims for relief, with each claim alleged against all three Defendants: (1) direct copyright

infringement; (2) vicarious copyright infringement; (3) contributory copyright infringement; and (4) false endorsement in violation of 15 U.S.C. § 1125(a)(1)(A). [ECF 1.] (Declaration of Edward M. Anderson ["Anderson Decl."], ¶ 31.) Following an agreement on personal service of Musk and an accompanying long extension of time for Defendants to respond, on February 4, 2025, Defendants timely filed motions to dismiss Alcon's initial Complaint pursuant to Fed. R. Civ. P. 12(b)(6) ("Rule 12(b)(6)") for failure to state a claim for relief. [ECF 22 and 23.] (Anderson Decl., ¶¶ 32-37.) Defendants did not raise any claimed violation of the notice pleading requirements of Fed. R. Civ. P. 8 ("Rule 8") as a ground to dismiss the initial Complaint. (Anderson Decl., ¶ 34.)

On February 13, 2025, Alcon responded to the motions by filing a First Amended Complaint ("FAC") by right pursuant to Fed. R. Civ. P. 15(a), [ECF 37], along with short oppositions to the motions. (Anderson Decl., ¶¶ 38-40.) The FAC narrowed the scope of the alleged wrongdoing by WBDI, but still alleged all four claims for relief against all three defendants, with the label of the fourth claim for relief adjusted to characterize the claim as one for "false affiliation and/or false endorsement" in violation of 15 U.S.C. § 1125(a)(1)(A). (Anderson Decl., ¶ 38.) The FAC made other changes relative to the FAC, notably including an extended introductory discussion of the storytelling power of motion pictures relative to photographs and why that matter to Plaintiff's claims for relief. (Anderson Decl., ¶¶ 39-40.)

Based on Alcon's filing of the FAC, the Court entered an order vacating Defendants' motions to dismiss the initial Complaint as moot. After a stipulated extension of time to respond, on March 6, 2025, Defendants filed motions to dismiss the FAC pursuant to Rule 12(b)(6) for failure to state a claim for relief, and also for violation of the notice pleading requirements of Rule 8. [ECF 48 and 49.] (Anderson Decl., ¶¶ 41-43.) After full briefing, the Court filed a minute order

attaching a tentative ruling on the motions on Friday, April 4, 2025 ("April 4, 2025 Tentative Ruling"), [ECF 61], and conducted an in-person hearing on April 7, 2025 allowing both sides substantial oral argument. (Anderson Decl., ¶ 43, Exhibit 1 [Reporter Transcript of April 7, 2025 Hearing].) Shortly after the conclusion of the hearing, the Court entered an Order granting Defendants' motions with leave to amend, and also ordering the parties to mediation on an expedited schedule ("April 7, 2025 Order"). [ECF 62.] (Anderson Decl., ¶ 43.)

The parties had a mediation session on April 24, 2025, at which session the case did not resolve. (Anderson Decl., ¶ 44.) However, the parties stayed in contact with the mediator, and, at the parties' joint requests, allowed a total of ten (10) weeks for Plaintiff to file an amended pleading, to facilitate settlement. (Anderson Decl., ¶¶ 44-45.) Plaintiff's counsel worked diligently in parallel to investigate facts to support and to draft and otherwise prepare Alcon's amended pleading. (Anderson Decl., ¶¶ 46-64, Exhibits 2 [Redline of SAC against FAC], 3 [model or marker reference pleading 18-cv-02544 Third Amended Complaint], 4 [model or marker reference pleading 20-cv-02416 First Amended Complaint].) The case did not settle and on June 16, 2025, Plaintiff timely filed its Second Amended Complaint ("SAC"). [ECF 70.] (Anderson Decl., ¶ 45.)

The SAC does not add any new defendants or claims for relief, drops the Lanham Act claim against WBDI, and makes what Plaintiff's counsel characterizes as a "hedged" drop of the vicarious copyright infringement claim against Musk and Tesla. (Anderson Decl., ¶¶ 65-66.) The SAC makes further other extensive amendments. (Anderson Decl., ¶¶ 73a-q.) Among other changes, it almost entirely eliminated the introductory storytelling power discussion in the FAC and made other changes to address Plaintiff's counsel's understanding of Rule 8 notice pleading concerns which the Court had about the FAC. (Anderson Decl., ¶¶ 73a-b.) The FAC added new factual allegations to effect that, as of the time of Tesla and

WBDI's dealmaking for the Event, Musk was a known risk to infringe Alcon's rights in BR2049 as part of his non-traditional marketing strategies for Tesla products, with the allegations supported by exhibits showing various social media communications from or responding to Musk and some press articles recognizing Musk as having associated Tesla's 2019 cybertruck with BR2049. (Anderson Decl., ¶¶ 73l.) The FAC also includes an extensive allegations on information and belief, with extensive supporting facts of plausibility, regarding WBDI's contractual right and actual ability to police Musk's conduct in the Event. (Anderson Decl., ¶ 73o.)

After an agreed extension of time to respond, on June 30, 2025, Defendants timely filed the present motions to dismiss the SAC with prejudice, as, essentially, a terminating sanction, for claimed violations of the notice pleading requirements of Rule 8. (Anderson Decl., ¶¶ 74-80.) The motions rely heavily on a February 26, 2020 Order by Judge Cormac J. Carney in a case from several years prior, in order Judge Carney dismissed an Alcon pleading drafted by the same Plaintiff's counsel representing Alcon in this action, for violation of the notice pleading requirements of Rule 8, with leave to amend. ("February 26, 2020 19-cv-00245 Rule 8 Dismissal Order"). Plaintiff's counsel's declaration discusses what happened in that case. (Anderson Decl., ¶¶ 15-30.)

IV. THE SAC SATISFIES RULE 8'S NOTICE PLEADING REQUIREMENT AND SHOULD NOT BE DISMISSED

A. The Fundamental Question is Fair Notice to Defendants and the SAC Gives Defendants Fair Notice of Plaintiff's Claims.

"It is the right and duty of a plaintiff initiating a case to file a 'short and plain statement of the claim.'" *Hearns v. San Bernardino Police Dept.*, 530 F.3d 1124, 1127 (9th Cir. 2008), citing Rule 8(a)(2). Rule 41(b) of the Federal Rules of Civil Procedure authorizes a district court to dismiss a complaint with prejudice for failure to comply with Rule 8(a). *Id.* at 1129, citing *Nevijel v. North Coast Life Ins. Co.*,

651 F.2d 671, 673 (9th Cir. 1981). That remedy, however, is extremely harsh and may only be applied in truly extreme circumstances not present here.

A complaint may not be dismissed for violating the notice pleading requirement of Rule 8, even with leave to amend, just because the complaint is excessively long, even if it is too long because it contains excessively detailed factual allegations. *Hearns*, 530 F.3d at 1127, 1131-33 (holding that district court's Rule 8 original dismissal of plaintiff's initial 81-page complaint with leave to amend and Rule 8 dismissal with prejudice of plaintiff's 68-page amended complaint were both improper dismissals). *See also Wynder v. McMahon*, 360 F.3d 73, 80 (2d Cir. 2004) (district court erred in dismissing complaint that was long, but not "so confused, ambiguous, vague or otherwise unintelligible that its true substance, if any is well disguised"); *Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003) ("Some complaints are windy but understandable. Surplusage can and should be ignored.")

In *Hearns*, in reversing both of the district court's Rule 8 dismissals, the Ninth Circuit court looked beyond the length of the complaints and admittedly excessive details, finding that the complaints satisfied the much more important issue of whether they gave adequate notice to the defendants to make pleading responses:

> [T]he complaint at issue here was not "replete with redundancy and largely irrelevant." [citing *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996).] It set out more factual detail than necessary, but the overview was relevant to Plaintiff's causes of action for employment discrimination. Nor was it "confusing and conclusory." [citing *Nevijel*, 651 F.2d at 674.] The complaint is logically organized, divided into a description of the parties, a chronological factual background, and presentation of enumerated legal claims, each of which lists the liable Defendants and legal basis therefor. The FAC and the original complaint contain excessive detail, but are intelligible and clearly delineate the claims and the Defendants against

> whom the claims are made. [Reference to dissent omitted.] Here, the Defendants should have no difficulty in responding to the claims with an answer and/or with a Rule 12(b)(6) motion to dismiss.

Hearns, 530 F.3d at 1132.

See also In re Intuitive Surgical Securities Litig., 65 F.3d 821, 831 (N.D. Cal. 2014) (complaint that was "indisputably cumbersome, surpassing one hundred pages in length," including thirty pages of recitation of "boilerplate corporate statements made by Defendants" nonetheless satisfied Rule 8 notice pleading requirements even under Fed. R. Civ. P. 9 heightened scrutiny standard, because "[p]laintiff here has precisely detailed each problematic statement, alleged that each statement is false and misleading, and alleged the reasons as to why each statement was false and misleading."); *In re Global Crossing, Ltd. Securities Litig.*, 313 F.Supp.2d 189, 211-213 (S.D.N.Y. 2003) (326 page, 824 paragraph complaint did not violate Rule 8 notice pleading requirement); *Doe v. Lombardo*, 745 F.Supp.3d 1109, 1125 (D. Nev. 2024) (observing that "dismissal under Rule 8 – particularly without leave to amend – is disfavored absent egregiously long or confusing pleadings" and declining to dismiss complaint even though the court agreed that the Complaint was "broad and admittedly meandering" and "some of the background included in the Complaint may be distracting or of peripheral relevance", and over defendants' contentions that complaint was "filed by attorneys with nefarious motives, which serve no purpose but to sully [defendant's] name."); *J.S.H. v. Newton*, 654 F.Supp.3d 7, 15 (D. Mass. 2023) (declining to make Rule 8 dismissal of long complaint); *Dennis v. DeJong*, 867 F.Supp.2d 588, 619 (E.D. Pa. 2011) (166 page, 676 paragraph complaint did not violate Rule 8); *In re Oldapco, Inc.*, 622 B.R. 140, 147-148 (USBC D. Del. 2020) (bankruptcy court judge declined to dismiss complaint with over 300 paragraphs of allegations for violation of Rule 8's notice pleading requirements, where the complaint was lengthy but did not disguise the substance of its claims, and the facts

were complex); *M.K. v. Tenet*, 216 F.R.D. 133 (D.D.C. 2002) (proposed amended complaint satisfied notice pleading requirement of Rule 8, even though amended complaint was 219 pages long, which was 175 pages longer than original defective complaint); *Burke v. Dowling*, 944 F.Supp. 1036, 1049 (E.D.N.Y. 1995) (115 page, 231 paragraph complaint did not violate notice pleading requirements of Rule 8).

Plaintiff's counsel worked very diligently on preparation of the SAC, including both to try to satisfy the Court's concerns as Plaintiff's counsel understood the April 4, 2025 Tentative Ruling, and so the SAC would be clear as to what claims it was making against Defendants and why, including using markers or guides from pleadings in other cases that Plaintiff's counsel know worked or that Plaintiff's counsel otherwise trusts as to quality. (Anderson Decl., ¶¶ 47-73, 73a-q, Exhibits 3 and 4.) On clarity of notice, it appears from the motions that Defendants take particular umbrage at the SAC's use of alternative pleading theories. Alternative pleading theories are expressly allowed by Rule 8, and even arguably a favored pleading tool to allow a plaintiff to bring claims where the plaintiff is lacking knowledge of important facts. *See* Rule 8(d)(2) and (3); *Molsbergen v. U.S.*, 757 F.2d 1016, 1019 (9th Cir. 1985); *Coleman v. Standard Life Ins. Co.*, 288 F.Supp.2d 1116, 1120, n. 1 (E.D. Cal. 2003). Moreover, Plaintiff's counsel took care to plead the alternative theories using techniques that Plaintiff's counsel knows have worked in a much more complex matter than this one. (Anderson Decl., ¶¶ 15-30, 63, 73k.)

B. The Skill Level and Sophistication of the Pleading Drafter Matters And That Does Not Necessarily Only Need to be a Negative Factor Here Against Plaintiff and Plaintiff's Counsel.

In considering whether a pleading satisfies the notice pleading requirements of Rule 8, "[p]ro se complaints are 'to be liberally construed,' and 'however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Harrell v. Board of Trustees of California State University*,

710 F.Supp.3d 742, 745 (N.D. Cal. 2024), citing *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). It is relatively easy to find statements like this in Rule 8 jurisprudence that go to the higher strictures placed on attorneys versus *pro se* litigants – what one might call the Rule 8 downside of being recognized as a pleading draft with sophistication. However, there is at least some authority for the idea that a district court should perhaps also consider, in a potentially positive way, that a skilled attorney might, for example, have thought a lot about their client's case, and have a legitimate plan for how what appears to be an unduly complex pleading will in fact facilitate getting the client's claim before the Court in a way that will work. *See, e.g., Atwood v. Humble Oil & Refining Co.*, 243 F.2d 885, 888-889 (5th Cir. 1957) (reversing district court dismissal of plaintiff's long, facially complex complaint for violation of notice pleading requirements of Rule 8).

Plaintiff's counsel respectfully submits that the Court perhaps is at least allowed to consider that they do have some record of navigating novel cases through the pleading stage in this courtroom with efficiency, using complaints that have many of the traits that Defendants are complaining about here with the SAC. (Anderson Decl., ¶¶ 53-62, Exhibit 3.)

Even with respect to the 19-cv-00245 case, a single order from which Defendants rely on heavily, while that Rule 8 dismissal with leave to amend order from Judge Carney is indeed something that happened, and it certainly makes clear that this Plaintiff's counsel is capable of mistakes in the Rule 8 area, Plaintiff and Plaintiff's counsel respectfully submit that what happened in the rest of the 19-cv-00245 case, including how Plaintiff's counsel responded to Judge Carney's Rule 8 dismissal, and how Plaintiff's counsel interacted with the adversaries and effected resolution of the case, is arguably more important. (Anderson Decl., ¶¶ 15-30.)

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C. Many of Defendants' Arguments Seek a Harsh Rule 8 Dismissal For Technical Violations of Notice Pleading Requirements That Do Not Deprive Defendants of Fair Notice, and a Dismissal Based on Which Would Arguably Violate Rule 8's "Substantial Justice" Directive.

There is no case of which Plaintiff's counsel is aware requiring that complaints must necessarily be in strict compliance with every particular individual rule or principle that Rule 8 jurisprudence might frown upon, and Defendants cite to no such case. Rule 8 itself dictates that "pleadings must be construed so as to do justice." Rule 8(e). The Rule 8 notice pleading standard is forgiving, not strict. *See, e.g., Nextel of New York, Inc. v. City of Mount Vernon*, 361 F.Supp.2d 336, 339 (S.D.N.Y. 2005) (Decline to dismiss 68 page, 373 paragraph complaint and observing that "Rule 8 is extremely permissive. … Dismissal pursuant to the rule 'is usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well-disguised."), citing *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 512-13 (2002) and quoting *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). There is no Rule 8 doctrine, or even Rule 12(f) doctrine, that complaints have to be perfect, in drafting style, or concision, either. *In re Catanella and E.F. Hutton and Co., Inc. Securities Litig.*, 583 F.Supp. 1388, 1401 (E.D. Pa. 1984) ("[Defendants'] argument misperceives the purpose of Rule 8. Striking complaints that fall short of perfection is the very practice which the Federal Rules sought to end. All that is required is a sufficient *factual* basis to place defendants on notice and allow them to frame a response.") (Emphasis in original); *see also Puente Arizona v. Arpaio*, 76 F.Supp.3d 833, 869 (D. Az. 2015) ("Defendants argue that dozens of paragraphs from the complaint are infirm for a variety of reasons. They argue that specified paragraphs contain argumentative and inflammatory allegations, immaterial and impertinent legislative history, vague and confusing statements as well as other problems. Defendants

essentially invite the Court to place the complaint under a microscope and assess whether each statement is pertinent to this case. The Court declines the invitation."), *partially reversed and partially vacated on other grounds*, 821 F.3d 1098 (9th Cir. 2016).

Plaintiff and Plaintiff's counsel respectfully submit that many of the issues that Defendants are raising in their motions are of this nature, and would have been better addressed and resolved by, for example, more robust L.R. 7-3 practice, a tool which Defendants and their counsel perhaps have under-utilized in the case relative to what could be done. (Anderson Decl., ¶¶ 26-28, 34-37, 41-42, 62, 74-78.)

D. Rule 12(b)(6) Considerations Are Relevant to the Rule 8 Analysis and Favor Plaintiff Here.

It is appropriate for the Court to consider Rule 12(b)(6) principles in the analysis of whether the complaint satisfies Rule 8's notice pleading requirement. *See, e.g., Don Copeland v. Energizer Holdings, Inc.*, 716 F.Supp.3d 749, 761-63 (N.D. Cal. 2024) (consideration of whether complaint satisfied notice requirements of Rule 8 depended on substantive elements and pleading standards of Antitrust claim). Rule 12(b)(6) practice rules and how Defendants chose to handle them earlier in the case also seem relevant to some of the protests that Defendants are making about the SAC, including about its prolixity, the number and nature of the new factual allegations regarding Musk and the 2019 cybertruck reveal, and about the SAC's information and belief pleading about WBDI's right and ability to police Musk during the Event. Plaintiff respectfully submits that by their own unnecessary Rule 12(b)(6) choices, they created a situation where they might reasonably have expected some of this to happen, if Plaintiff and Plaintiff's counsel were doing their diligence duties to move the case forward at the pleading stage, as explained below.

The focus of Rule 12(b)(6) analysis "is the complaint," and, generally, the court "may not consider any material beyond the pleadings in ruling on a Rule

12(b)(6) motion" without treating the motion pursuant to Fed. R. Civ. P. 56 (summary judgment). *U.S. v. Corinthian Colleges*, 655 F.3d 984, 991 (9th Cir. 2011); *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (2001). The court may consider external material proffered by the movant, pursuant to three exceptions: 1) exhibits to the complaint; 2) documents referenced by the complaint, upon which it "necessarily relies," and the authenticity of which are undisputed; and 3) matters properly subject to judicial notice. *Corinthian Colleges*, 655 F.3d at 991, 998-999; *Lee*, 250 F.3d at 688. The Ninth Circuit recognizes that defendants sometimes abuse these exceptions to try to "hijack" a plaintiff's complaint by attempting to exploit the exception procedures improperly to present their own version of the facts too early, at the pleadings stage. *See, e.g., Pirani v. Netflix, Inc.*, 710 F.Supp.3d 756, 766 (N.D. Cal. 2024), citing and discussing *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998-99 (9th Cir. 2018).

Thus, if, as happened here, a defendant or set of defendants proffers extrinsic evidence (*e.g.*, a document that the plaintiff has never seen before) in support of a Rule 12(b)(6) challenge to a plaintiff's pleading, (Anderson Decl., ¶¶ 35-37), it is proper for the Court not to consider it on *that* pleading challenge. The rules arguably change some, however, if the initial Rule 12(b)(6) challenge results in a dismissal with leave to amend, and there is a subsequent pleading challenge to the resulting amended pleading, especially if the extrinsic evidence that the defendant(s) had previously proffered arguably has information that the plaintiff could have used to address a pleading deficiency that was a reason identified by the court for the prior dismissal.

Once a court has given a plaintiff some guidance on a missing factual deficiency, if there is a source of information which the court knows that the plaintiff has available to it and that could have helped fill the identified information gap in the prior pleading, and the plaintiff fails to at least try to understand and plead

about the known available information in the amended pleading, the court is allowed to hold that failure to try to use the available information against the plaintiff in considering the amended pleading. *See, e.g., Anderson v. Intel Corp. Investment Policy Committee*, 137 F.4th 1015, 1020, 1025-26 (9th Cir. May 22, 2025) (district court's dismissal without leave to amend of plaintiff's breach of fiduciary duty case against ERISA administrator was proper where plaintiff did not actually know missing information to fill information gap identified by district court on prior dismissal with leave to amend, but could have used administrator's plan disclosures to participants to try to fill the information gap for the amended pleading, but did not do so). Thus, once a defendant or set of defendants voluntarily elects to provide a plaintiff with information before discovery, and where the case is still in the pleading stage, the defendants have arguably self-ignited potentially intensive informal discovery efforts that the plaintiff has to try to attempt.

The same Rule 12(b)(6) diligence principles also arguably dictate that a plaintiff should be given greater leeway under Rule 8 notice pleading requirements in an amended pleading to plead more facts rather than fewer facts, on issues where the Court has identified information gaps the plaintiff needs to try to cure on amendment, and where Defendants have put some incomplete information about to Plaintiff. That is because the Court's identification of the gap, combined with the flashing light of the partial information and what might be done with it, arguably raises the specificity bar on the plaintiff for the amended pleading. *See In re Cloudera, Inc.*, 121 F.4th 1180, 1189-90 (9th Cir. 2024) (where a court identifies factual pleading gaps on a dismissal with leave to amend, plaintiff has a duty to try to put forward the identified missing facts with specificity in amended pleading); *Election Integrity Project California, Inc. v. Weber*, 113 F.4th 1072, 1099-1100 (9th Cir. 2024) (failure to come forward with available facts or legal theories to cure pleading deficiencies after being granted leave to amend, or to explain why such

acts or legal theories were unavailable can warrant dismissal without further leave to amend); *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) (same principal).

Plaintiff and Plaintiff's counsel were mindful of these principals in investigating, preparing, and crafting the SAC, and it is also this Plaintiff's counsel's usual practice to try hard to bring forward all factual allegations that might seem relevant sooner rather than later, so that the case can advance out of the pleading stage more efficiently and expeditiously, even if looks like Plaintiff's counsel's client might lose at the pleading stage on key issues, or even on the entire case. (Anderson Decl., ¶¶ 46-47, 59-60, 67-72.)

V. DEFENDANTS' OTHER ARGUMENTS DO NOT SUPPORT A DISMISSAL FOR VIOLATION OF THE NOTICE PLEADING REQUIREMENTS OF RULE 8

Defendants cite *Earth Island Institute v. United States Forest Service*, 87 F.4th 1054, 1071-72 (2023), apparently in support an argument that, since the SAC contains two references to statements by Musk that occurred after the filing of the action, that the SAC is improperly trying to hold Musk or Tesla liable for conduct beyond what the action has to date has properly given him notice could be at issue. Plaintiff agrees that, absent ongoing or continuing conduct, none of the Defendants can be held liable for conduct that occurred after the initial filing of the action (after October 21, 2024) without Plaintiff seeking leave to supplement its pleadings (which is the proper procedure to add claims about post-filing conduct). However, that does not mean that statements or conduct by Musk that occurred post-filing cannot be alleged in the SAC to support Plaintiff's plausibility arguments about Musk's tendencies and intentions for things he did pre-filing, which is the purpose of the referenced allegations in the SAC. The post-filing statements might not be admissible at trial without leave to supplement, for example. Juries do not

determine plausibility satisfaction for pleadings, though; that is strictly a judicial function. Information provided or considered by the Court for purposes of whether Plaintiff's allegations are plausible does not need to rise to the level of admissible evidence at all, and indeed can be based on such amorphous information as the Court's common sense.

VI. EVEN IF THE COURT FINDS THAT THE SAC VIOLATES RULE 8's NOTICE PLEADING REQUIREMENT, DISMISSAL WITH PREJUDICE IS NOT WARRANTED

Even where a district court finds a complaint has Rule 8 issues, before entering what is essentially a terminating sanctions order dismissing the complaint with prejudice, the district court " 'should first consider less drastic alternatives.' " *Hearns*, 530 F.3d at 1132, quoting *McHenry*, 84 F.3d at 1178. Among many other tools less drastic than dismissal with prejudice, both defendants and the Court have available the more surgical tool of Fed. R. Civ. P. 12(f) ("Rule 12(f)"), providing that a court may, on its own or on a motion by a party, strike a pleading for including "redundant, immaterial, impertinent, or scandalous matter.") *See, e.g.*, *Lombardo*, 745 F.Supp.3d at 1125-26. The Court can also address perceived Rule 8 issues by entering an order relieving defendants from answering particular allegations in a complaint. *Hearns*, 530 F.3d at 1132. District courts also have the power to dismiss claims *sua sponte* under Rule 12(b)(6) for failure to state a claim for relief, *see, e.g., BMG Rts Mgmt. (US) LLC v. Joyy, Inc.*, 716 F.Supp.3d 835 (C.D. Cal. 2024), citing *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987), to the extent such a type of concern might be part of the perception of a Rule 8 violation (although, as discussed above, the notice pleading requirement satisfaction issue and whether a pleading states a claim to survive Rule 12(b)(6) challenge are distinct issues).

In considering the appropriate remedy if the district court perceives a Rule 8 violation, the district court should consider multiple factors. They include "whether 'public policy strongly favor[s] resolution of this dispute on the merits." *Hearns*, 530 F.3d at 1132, quoting *Dahl v. City of Huntingon Beach*, 84 F.3d 363, 366 (9th Cir. 1996). "The court should also consider whether 'dismissal [would] severely penalize[] plaintiffs … for their counsels' bad behavior.'" *Hearns*, 530 F.3d at 1132, quoting *Dahl*, 84 F.3d at 366.

As the Ninth Circuit cautioned in *Hearns*, because a dismissal with prejudice for violating Rule 8 is a measure essentially equivalent to a terminating sanction for bad behavior rather than a resolution of the case on the merits, even if there is evidence that the litigant and not the counsel is responsible, " '[t]he sanction of dismissal should be imposed only if the deceptive conduct is willful, in bad faith, or relates to the matters in controversy in such a way as to interfere with the rightful decision of the case.'" 530 F.3d at 1132, quoting *United States v. Nat'l Med. Enters., Inc.*, 792 F.2d 906, 912 (9th Cir. 1986). *See also Hamilton Copper & Steel Corp. v. Primary Steel, Inc.*, 898 F.2d 1428, 1430 (1990) (noting that even in light of party's misconduct, district court should generally consider alternatives to dismissal with prejudice). Litigation conduct attributable to the plaintiff or plaintiff's counsel which the Court may consider include undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by prior amendments, undue prejudice to the opposing party, and futility of amendment. *See, e.g., Harrell*, 710 F.Supp.3d at 746, citing *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Defendants' proffered authorities do not teach differently, and, indeed, when examined, tend to re-affirm the above principles. In *Hann v. Int'l Brotherhood of Magicians IBM*, 22-866 JGB (SHKx), 2023 WL 5504963 (C.D. Cal. 2023), the *pro se* plaintiff was a convicted sex offender, with the offense involving minors. *Id.* at *3 and *4. His entire case was premised on his plainly false denial that he was such.

Id. at *4. His pleadings went on "lengthy tangents about [the defendant Magician organizations that he was upset about being kicked out of for being a sex offender] welcoming unsavory characters such as 'terrorists,' 'treasonists,' and 'drug lords' in their ranks and comparing himself to martyrs like Jesus, Socrates and Joan of Arc." Id. at *6. He repeatedly failed to file papers in the case in a timely manner. *Id.* at *5. The district court had to continue scheduling conferences in the case, apparently due to plaintiff's improper conduct, at least five times. *Id.* at *2.

Many or all of Defendants' other cases where there was a Rule 8 dismissal with prejudice have similar types of problematic conduct by litigant or litigant's counsel, well beyond merely the form of the pleading. *See, e.g., Nevijel*, 651 F.2d at 674-675 (plaintiff's counsel had a history of bringing the same or similar arguably "tin foil hat"-level conspiracy claims across a range of jurisdictions, and then not responding for as long as 19 months to dismissal motions in some of the cases); *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 416 (1985) and *passim* (plaintiff's counsel repeatedly filed cases for claims that had already been decided to a res judicata level in prior matters, to the level of courts issuing contempt orders against him for the practice); *McHenry*, 84 F.3d at 1174 (complaint was part of a long history of plaintiff bringing litigation for wide-ranging, perhaps not fully sane, conspiracy theories against a large number of public officials in the City and County of San Francisco).

There is no evidence whatsoever of anything like that kind of conduct here by Plaintiff or Plaintiff's counsel, in this case, or indeed in any other. In considering the types of factors above, there are some circumstances where the Court may consider the conduct of the litigant and/or the litigant's counsel's "bad actor" or "futile" behavior in cases other than the case at issue before the Court. For example, where a set of related plaintiffs has tried unsuccessfully to bring the same or highly similar complaints against the same defendant across multiple jurisdictions, a court

may properly consider the totality of failed amendments across all jurisdictions, as if it were all one case, for purposes of denying further leave to amend. *See, e.g.*, *Coronavirus Reporter v. Apple, Inc.*, 85 F.4th 948, 958 (9th Cir. 2023) ("Plaintiffs-Appellants were given a total of seven opportunities to amend similar complaints across jurisdictions and between various permutations of plaintiffs, but still failed to state their claims here adequately. It is within the district court's discretion to determine that an eighth opportunity would produce a similar result.")

Some classes of litigants are also subject to special, more restrictive rules that require courts to consider their pleading conduct across all cases they have ever brought, not only the particular case at hand. One of the least forgiving examples is the three-strikes provision of the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(g). Under that provision, a prisoner loses the ability to proceed *in forma pauperis* ("IFP") (which often means effectively losing the ability to litigate altogether) if the prisoner, while detained or incarcerated (across their entire life), ever reaches a total of three actions or appeals dismissed on the grounds that the action or appeal was "frivolous, malicious, or fails to state a claim upon which relief may be granted," subject to an exception allowing even a "three-strikes" prisoner litigant to proceed IFP if said prisoner "is under imminent danger of serious physical injury." *Id.* In other words, the PLRA "three strikes" standard is so strict that just an ordinary Rule 12(b)(6) dismissal of a complaint *always* counts as a strike. *Spencer v. Barajas*, 140 F.4th 1061, 1066 (9th Cir. June 6, 2025). A prisoner can also receive a "strike" for a dismissal of a complaint for violating the notice pleading requirement of Rule 8, but under the reasoning of *Knapp v. Hogan*, 738 F.3d 1106, 1110 (9th Cir. 2013), the threshold for the Rule 8 dismissal becoming a strike is if the prisoner is given leave to amend, but fails to do so, either at all, or effectively. *Id.* at 1110. Under the reasoning of *Knapp*, a prisoner litigant who

experiences a Rule 8 dismissal with leave to amend, and then *does* effectively amend, would not receive a strike for that cured Rule 8 dismissal under the PLRA.

Defendants, especially by their heavy reliance on the February 26, 2020 19-cv-00245 Rule 8 Dismissal Order, are effectively arguing that Plaintiff's counsel should be treated more harshly than a prisoner litigant under the PLRA: because Plaintiff's counsel quickly and effectively cured the Rule 8 issues to Judge Carney's almost immediate satisfaction in that case, the February 26, 2020 19-cv-00245 Rule 8 Dismissal Order would not even be a "strike" under the PLRA, if it applied.

Plaintiff's counsel's dialogue with the Court at the April 7, 2025 hearing to the effect that Alcon feels it needs to pursue the case to achieve disassociation form Musk, including for the sake of Alcon's reputation, is not any indication of bad faith. The standing test for Lanham Act claims is the "zone of interests" test of *Lexmark Int'l v. Static Control Components, Inc.*, 572 U.S. 118 (2014). *Lexmark* standing can be satisfied by the plaintiff showing that the defendant's conduct caused plaintiff "an injury to a commercial interest in *reputation* or sales." *Id.* at 131-32. (Emphasis added.) "Reputation injury" is enough. *Id.* at 133. Thus, an allegation or contention by a plaintiff that a perceived association with the defendant is injuring the plaintiff's reputation, and that the plaintiff is pursuing a lawsuit for the purpose of disassociating from the defendant is not only not improper in any way, it is the type of concern that can create *Lexmark* standing.

That the SAC is advancing claims and legal theories which appear to be legally challenging, or even which the Court may be strongly indicating it is not likely to rule in Plaintiff's favor about, does not support a dismissal for violating the notice pleading requirements of Rule 8. Defendants contend or at least strongly suggest that the SAC and Plaintiff and Plaintiff's counsel are violating Fed. R. Civ. P. 11 ("Rule 11") by advancing claims that appear to be under legal pressure or even unlikely to be persuasive to the Court here, citing for example, *Chavers v. GMAC*

Mortgage, LLC, 2:11-cv-01097-ODW (SSx), 2012 WL 777491 (C.D. Cal. 2012).

However, it is not improper at all under any rule, including Rule 11, for the SAC to advance such claims or theories, even if only for the legitimate purpose of reaching a dismissal with prejudice in an appealable form of order. The Rule 11 standard for what positions an attorney may advance is significantly broader than Defendants are understanding; the standard is that an attorney by presenting, for example, a pleading, is certifying to best of that attorney's knowledge, information, and belief, formed after a reasonable inquiry, that, *inter alia*, "(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;" and "(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Rule 11(b)(1) and (2). Plaintiff's counsel here is experienced with bring novel claims and they no history of any Court sanctioning them for violating Rule 11 or anything else, with the exception of Plaintiff's lead counsel being sanctioned once for $3,000, which sanctions were vacated on appeal. (Anderson Decl., ¶¶ 2-10, 70-72, 73q.)

The more appropriate way for Defendants to finish out claims or legal theories which Defendants believe they are going to win, and that Defendants want to try to win at the pleading stage, is to make another Rule 12 motion. Plaintiff will likely even facilitate that within reason, and make its own Rule 12 arguments in response. For example, Defendants argue that *Dr. Seuss Enterprises, L.P. v. ComicMix LLC*, 983 F.3d 443 (9th Cir. 2020) supports that, at least in 2020, the Ninth Circuit believed that, at least on the facts of that case, a defendant could have engaged in expressive conduct that was copyright infringement of the plaintiff's work, but which same copyright infringing work was still protected by a *Rogers* defense from Lanham Act claims – and thus counters one argument which

Plaintiff's counsel made during the April 7, 2025 hearing. It is a case worth looking at on the issue, but it does appear at least in significant doubt that the Ninth Circuit would still rule the same way on the same facts in light of its recent opinion in *Yuga Labs, Inc. v. Ripps*, 144 F.4th 1137 (9th Cir. June 23, 2025). Moreover, as Plaintiff made clear at the April 7, 2025 oral argument, Plaintiff contends that the Ninth Circuit is not, or might not be, adopting the teachings of *Jack Daniel's Properties, Inc. v. VIP Products LLC*, 599 U.S. 140 (2023) and how much it limits *Rogers*, as fully as the United States Supreme Court might really intend. It is not a violation of any rule for Plaintiff to advance and preserve that argument in the SAC, even if the Court here is perhaps not going to agree with it ultimately.

Musk and Tesla's contentions that Musk's intentions are not relevant to any of Plaintiff's claims is without merit. A plaintiff's allegations of defendant's subjective intentions in using the plaintiff's marks is relevant on the issue of nominative fair use alone, a defense which Musk and Tesla have expressly raised. *See Yuga Labs*, 144 F.4th at 1164-1166; *see also, e.g., Adobe Systems Inc. v. A&S Electronics, Inc.*, 153 F.Supp.3d 1136, 1142-43 (N.D. Cal. 2015) (finding plaintiff sufficiently plead past nominative fair use defense by allegations that "[defendant's] use of [plaintiff's] marks was not intended to describe [plaintiff's] product, but rather to make it appear that the software was sanctioned by Adobe for sale and distribution.")

As to WBDI's contentions or intimations to the effect that Plaintiff's counsel is making frivolous arguments about direct and vicarious copyright infringement theories, there are cases that seem to start to get pretty close to what it looks like WBDI may have done here. *See, e.g., Robinson v. Binello*, 771 F.Supp.3d 1114, 1122-23, 1125-26 (N.D. Cal. March 14, 2025) (plaintiff's complaint alleged sufficient volitional conduct to state direct copyright infringement claim against online gaming platform operator Roblox's moderation clearance work on infringing

content presented by a game designer defendant was an intervening step in infringing content going onto gaming platform, and stated valid vicarious copyright infringement claim against Roblox even absent evidence of causal connection between reason direct infringer used Roblox platform and direct infringement, where Roblox received fees tied directly to the infringement). In any event, Plaintiff and Plaintiff's counsel are within the rules to try to make a colorable argument that, for example, vicarious copyright infringement law should adjusted so that it does in fact cover what happened here as among the Defendants with the Event.

The motions should be denied. If the Court grants them or either of them, it should be with leave to amend (and on amendment, Plaintiff requests leave to make one specific small amendment to paragraph 193 of the SAC, Anderson Decl., ¶ 79.) If the Court does find a violation at a level warranting dismissal with prejudice, the Court should strongly consider the less drastic remedy of allowing Alcon to get new counsel or chaperone counsel for current Plaintiff's counsel, who is the problem if there is one, not Alcon as the client. (Anderson Decl., ¶ 80.)

DATED: August 21, 2025

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/s/ Edward M. Anderson

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff Alcon Entertainment, LLC, certifies that this brief contains 6,858 words, which complies with the word limit of L.R. 11-6.1.

/s/ Edward M. Anderson

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Exhibit 39

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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALCON ENTERTAINMENT, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TESLA, INC., a Texas Corporation; ELON MUSK, an individual; WARNER BROS. DISCOVERY, INC., a Delaware Corporation,

Defendants.

Case No. 2:24-cv-09033-GW-RAO

DEFENDANTS TESLA, INC., ELON MUSK, AND WARNER BROS. DISCOVERY, INC.'S REPLY IN SUPPORT OF THEIR MOTIONS TO DISMISS SECOND AMENDED COMPLAINT

Hearing Date: September 11, 2025
Hearing Time: 8:30 a.m.
Courtroom: 9D
Judge: Hon. George H. Wu

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I. INTRODUCTION

Defendants are not seeking "perfection," as Alcon suggests. Dkt. 75 ("Opp.") 9:17, 9:20.[1] Nor do Defendants move to dismiss "just because the [SAC] is excessively long." *Id.* 5:4-5. Defendants have been seeking fair notice of Plaintiff's claims and their supporting facts since Alcon filed its first complaint. The SAC, far worse than the two complaints before it, is so convoluted and confusing that it continues to be impossible to discern the basis and scope of Alcon's claims.

Alcon attempts to defend the SAC's complexity and justify its lengthy and contradictory allegations with yet another prolix brief and superfluous attachments, with little to no attempt to address many of the specific Rule 8 issues Defendants identified or justify the significant burdens the SAC places on Defendants and the Court. Defendants believe that a dismissal of Alcon's claims with prejudice is warranted under the circumstances and the law.

Because Alcon never cured—and concedes it cannot cure—the fatal deficiencies noted in the Court's Tentative Ruling on Alcon's direct copyright infringement claim against WBDI, vicarious copyright infringement claim against all Defendants, and Lanham Act claim against all Defendants, should the Court not dismiss the SAC in its entirety with prejudice, Defendants request the Court dismiss these claims under Rule 12(b)(6), as it tentatively ruled previously. Indeed, Alcon, itself, invites the Court to conduct a Rule 12 analysis.

Should Alcon be granted *a fourth* attempt to adequately plead its claims, Defendants strongly and respectfully urge the Court to set guardrails on any additional

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[1] This reply is filed on behalf of all Defendants, even though Defendants Tesla and Musk and Defendant WBDI filed separate motions to dismiss the SAC—Dkt. 73-1 ("Tesla Mot.") and Dkt. 74-1 ("WBDI Mot.") (collectively, "Motions"). Citations to the parties' briefs and the Court's tentative ruling on Defendants' motions to dismiss the FAC (Dkt. 61; "Tentative Ruling") are to the page numbers at the bottom of the pages, not the page numbers assigned by ECF.

complaint. Although a page limit may not resolve all of Alcon's circuitous arguments and confusing allegations, Defendants submit that it appears to be one mechanism by which Alcon *might* be able to comply with Rule 8, or at least come closer.

II. ARGUMENT

A. Dismissal with Prejudice Is Warranted Under Rules 8 and 41(b)

As the Ninth Circuit has noted, "[c]omplaints that are filed in repeated and knowing violation of Federal Rule 8's pleading requirements are a great drain on the court system, and the reviewing court cannot be expected to fish a gold coin from a bucket of mud." *Knapp v. Hogan*, 738 F.3d 1106, 1111 (9th Cir. 2013) (internal quotation omitted). "Our district courts are busy enough without having to penetrate a tome approaching the magnitude of War and Peace to discern a plaintiff's claims and allegations." *Cafasso, U.S. ex rel. v. General Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011). Yet, this is precisely what Alcon's SAC demands of both the Court and Defendants—for the *third* time. Under the present circumstances, and in consideration of the briefing on these Motions, Defendants request that the Court dismiss this case with prejudice.

Defendants maintain that dismissal with prejudice is appropriate because this is not Alcon's first Rule 8 issue in this case or in its other cases. Tesla Mot. 2:12-18; WBDI Mot. 1:26-2:5; Dkt. 75-2 ("Anderson Decl.") ¶¶ 13, 19-22, 39-40, 49, 73(q). Even in the relatively short history of this case, Alcon and its counsel have shown that they are incapable of drafting short, plain statements free of confusing prose. *See generally* SAC; Anderson Decl.[2] And Alcon's Opposition admits (over and over) that the SAC is just another example of Alcon violating the Federal Rules of Civil

[2] The Anderson Declaration, which spans 45 pages (not including its four exhibits) and 80 paragraphs (with additional sub-paragraphs), attempts to justify Alcon's amendments to its prior pleadings and explain slight changes Alcon might make to the SAC if given another opportunity to amend (among many other things). This declaration is an improper attempt to skirt the word limit in L.R. 11-6.1.

Procedure in this and other cases. Opp. 7:18-20 (explaining that alternative theories were pled using "techniques" that previously "worked" in *Alcon v. Peugeot* (No. 19-cv-00245)); Anderson Decl. ¶¶ 13, 19-22, 39 (noting prior allegations "unnecessarily pressing up against the limits of Rule 8"), 40 (suggesting that there were "potentially also other Rule 8 issues in the FAC" beyond those discussed in ¶ 39), 49 (noting prior mistake in Rule 8 notice pleading compliance), 73(q) (explaining counsel's "preferred practice" of "red-flagging" questionable claims under the "teaching of Rule 11").

Alcon's statements that the defendants in *Peugeot* did not challenge the sufficiency of the second amended complaint and its representations that the court approved that complaint's pleading style are inaccurate. *See* Anderson Decl. ¶ 23 (describing Alcon's interpretation of "an implicit finding by Judge Carney" and hearsay from the *Peugeot* defendants concerning the sufficiency of the second amended complaint). In fact, Alcon had to meet and confer with the *Peugeot* defendants about the need for greater pleading clarity, Alcon voluntarily agreed to file a *third* amended complaint in that case, and the court granted leave to allow the third amended complaint (i.e., the court found that a further amendment was warranted). *Id.* ¶¶ 27-28. Counsel's repeated testing-the-system approach fails to comply with Rule 8 and is not in good faith (despite counsel's repeated proclamations to the contrary).

Alcon also does not respond to Defendants' arguments concerning the undue burden the SAC imposes on the Court or the undue prejudice to Defendants. Tesla Mot. § III.C; WBDI Mot. § III.D. It ignores these arguments even when the "multiple factors" district courts consider in deciding whether to dismiss a pleading with prejudice (Opp. 15:1-2) include the "public's interest in expeditious resolution of litigation," "the court's need to manage its docket," and "the risk of prejudice to the defendants." *Rosales v. United States Dep't of Interior*, No. 2:20-cv-00521-KJM-KJN, 2022 WL 2052639, at *2-3 (E.D. Cal. June 7, 2022) (finding, *inter alia*, the

court's need to manage its docket favored dismissal with prejudice because "[c]onfusing complaints unnecessarily burden the courts…"), *aff'd*, No. 22-16196, 2023 WL 5524755 (9th Cir. Aug. 28, 2023). Alcon also does not appear to appreciate the magnitude of these issues. For example, Alcon's suggestion that the Court strike certain paragraphs of the SAC or otherwise excuse Defendants from responding to them (Opp. 14:12-19) fails to acknowledge that its Rule 8 violations infect almost the entire SAC. Striking factual detail would not, for example, resolve any of the issues with respect to Alcon's incoherent legal theories or unclear citations. Even if it were possible, identifying the paragraphs to strike would be ***highly*** burdensome on the Court and Defendants. *See, e.g.*, *Sarmiento v. Marquez*, No. 21-cv-06712-PJH, 2022 WL 2918906, at *4 (N.D. Cal. July 25, 2022) (dismissing FAC for violating Rule 8 rather than striking certain paragraphs, and noting that "the court is under no obligation to clarify…allegations for plaintiffs by striking the surplusage"); *Sarmiento v. Marquez*, No. 4:21-cv-06712-PJH, 2022 WL 16856103, at *4 (N.D. Cal. Nov. 10, 2022) (dismissing with prejudice for not complying with court's instruction and again violating Rule 8); *see also Alcon Ent., LLC v. Automobiles Peugeot SA*, No. 2:19-cv-00245-CJC-AFMx, 2020 WL 8365240, at *1, 4 (C.D. Cal. Feb. 26, 2020) (dismissing FAC for violating Rule 8 rather than striking portions of it).

Alcon also fails to appreciate the significant burden that responding to the SAC would place on Defendants when it argues that Defendants should "make another Rule 12 motion." Opp. 19:18-22. But a fulsome Rule 12 motion would require Defendants to address all possible combinations of Alcon's alternative and inconsistent legal and factual theories. This is essentially impossible when issues as basic as what allegedly protectable elements of BR2049 were purportedly copied (Tesla Mot. 11:25-12:21) and what level of knowledge WBDI is alleged to have for contributory copyright liability (WBDI Mot. 14:17-15:24 (describing inconsistent allegations in a single paragraph)), for example, are still unclear. This is not only

unfair but highly prejudicial. As the Ninth Circuit has noted, prolix and confusing complaints put defendants "at risk…that plaintiffs will surprise them with something new at trial which they reasonably did not understand to be in the case at all." *McHenry v. Renne*, 84 F.3d 1172, 1179-80 (9th Cir. 1996). Similarly, if Defendants instead were to answer the SAC, they would be required to investigate each factual allegation in the 95-page, 257-paragraph (plus sub-paragraphs) SAC to meet their Rule 11 obligations, including all of Alcon's alternative and inconsistent theories—even the ones Alcon's counsel admits are unlikely or mere "guesses." Anderson Decl. ¶¶ 67, 73(o); *Sarmiento*, 2022 WL 2918906, at *4 ("As it is written, the FAC creates an unfair burden on defendants 'just to prepare an answer that admits or denies such allegations, and to determine what claims and allegations must be defended or otherwise litigated.'" (quoting *Cafasso*, 637 F.3d at 1059)); *Whitsitt v. Industrial Empl. Dist. Ass'n*, No. 4:13-cv-00396-SBA, 2014 WL 3615352, at *8 (N.D. Cal. July 22, 2014) (37-page complaint dismissed where the ability of the defendants to respond to the complaint consistent with Rule 8(b) was "particularly challenging").

B. The SAC Is Not Only Excessively Long, It Fails to Give Defendants Fair Notice of Alcon's Claims in Violation of Rule 8

Alcon does not dispute that the purpose of Rule 8's pleading requirement is to provide defendants with fair notice of plaintiffs' claims and the bases for them, and that complaints that do not provide fair notice should be dismissed for violating Rule 8. Opp. § IV; Tesla Mot. 3:7-11, 14:25-15:4, 18:20-22; WBDI Mot. 2:19-23, 10:11-16, 17:20-18:4. Instead, Alcon's Opposition wastes significant space arguing that excessive length alone is not a reason to dismiss a complaint under Rule 8. Opp. 5:3-7:5. But Defendants are not requesting dismissal with prejudice due ***only*** to the SAC's excessive length.

Defendants explained in detail, with specific examples, that Alcon's legal and factual theories are pled in such a confusing and convoluted manner that they are

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incomprehensible, deprive Defendants of fair notice, and prevent Defendants from meaningfully responding to the SAC. Tesla Mot. § III.B; WBDI Mot. §§ III.B-C. These issues are the crux of Defendants' Motions.

In response, Alcon relies on *Hearns v. San Bernardino Police Department*, 530 F.3d 1124 (9th Cir. 2008), for the proposition that excessive length alone, even when due to excessively detailed factual allegations, is not a reason to dismiss a complaint under Rule 8. Opp. 5:3-6:4. But the defendants in *Hearns* did "not assert that the complaint fail[ed] to set forth cognizable causes of action" or that "the legal theories [were] incoherent." 530 F.3d at 1130. *Hearns*, and other cases cited by Alcon (Opp. § IV.A), affirm that confusing and convoluted pleadings, such as the SAC here, should be dismissed for violating Rule 8.[3] In reversing the district court's Rule 8 dismissals, the Ninth Circuit in *Hearns* noted that the complaint was *not* "replete with redundancy and largely irrelevant" and *not* "confusing and conclusory." 530 F.3d at 1132. In stark contrast to the SAC, and as Alcon acknowledges, the Ninth Circuit found that the defendants could respond to the complaint because it was "logically organized," "intelligible," and "clearly delineate[d] the claims and the Defendants against whom the claims [were] made." *Id.*; Opp. 5:15-6:4. This is not the case here.

Despite claiming "The Fundamental Question is Fair Notice to Defendants and the SAC Gives Defendants Fair Notice of Plaintiff's Claims" (Opp. § IV.A

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[3] *E.g.*, *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981) (affirming Rule 8 dismissal with prejudice of "verbose, confusing and conclusory" complaint); *U.S. ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003) ("Rule 8(a) requires parties to make their pleadings straightforward, so that judges and adverse parties need not try to fish a gold coin from a bucket of mud."); *Wynder v. McMahon*, 360 F.3d 73, 80 (2d Cir. 2004) ("Dismissal pursuant to [Rule 8] is usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." (internal quotation omitted)); *In re Oldapco, Inc.*, 622 B.R. 140, 147-48 (Bankr. D. Del. 2020) (similar); *Burke v. Dowling*, 944 F. Supp. 1036, 1049 (E.D.N.Y. 1995) (similar).

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subheading), Alcon does not explain how the SAC provides fair notice. Its counsel merely states that he tried to satisfy the Court's concerns in the Tentative Ruling and used "markers or guides from pleadings in other cases" that "worked" before. *Id.* 7:6-20. But this is a non-sequitur, and as discussed below, Alcon ignores even *this* opportunity to provide notice of its claims by failing to address the specific Rule 8 issues Defendants identified.

C. Alcon Ignores Specific Rule 8 Violations Defendants Raised

Defendants provided numerous examples of Alcon's Rule 8 violations including incomprehensible legal theories, meandering alternative theories, and confusing use of internal references, appendices, and shotgun pleading style. Tesla Mot. § III.B; WBDI Mot. §§ III.B-C. Alcon fails to substantively address virtually all of these issues or provide adequate clarity, thereby conceding them. *Travelers Cas. Ins. Co. of Am. v. Geragos and Geragos*, 495 F. Supp. 3d 848, 854 (C.D. Cal. 2020) ("Arguments to which no response is supplied are deemed conceded.").

1. Confusing Allegations and Incomprehensible Legal Theories

A fundamental issue with the SAC is the indefinite scope of the allegedly "protectable elements of BR2049" that Tesla and Musk purportedly copied. As previously noted, Alcon's "Non-Exhaustive List" of those elements (SAC, Appx. 2 ¶ 13) leaves the door open for an indefinite number of allegedly protected elements and even the first element—"Iconic Still Images which Evoke Qualitatively Important Scenes or Sequences of BR2049"—is vague and described in a circular and subjective manner. Tesla Mot. 11:25-12:21. Alcon made no effort to clarify its "Non-Exhaustive List." And its suggested solution, simply moving its confusing list from Appendix 2 to the body of the pleading (Anderson Decl. ¶ 73(h)), does not resolve this issue.

With respect to Defendants' arguments concerning the "novel" "derivative work reference leveraging theory" purportedly applicable to Alcon's copyright claim

(Tesla Mot. § III.B.1.a; WBDI Mot. § III.B.1.a.), Alcon's counsel merely cites to the SAC paragraph alleging this theory as one of several paragraphs where he "red-flagg[ed]" "potentially tough issues" and legal theories that he recognizes are "potentially under pressure." Anderson Decl. ¶ 73(q) (citing SAC ¶ 194). Alcon's explanation of this so-called "red-flagging" pleading style is itself confusing and is not responsive to the Rule 8 issue. *Id.* Because Alcon fails to also respond to Defendants' additional arguments about the "derivative work reference leveraging theory"—namely, the improper references to legal arguments in a previously filed brief, that "derivative work reference leveraging" is not a theory that exists in copyright law, and the nonsensical "novel theory" that Musk and Tesla's intentions should be considered in analyzing substantial similarity—those arguments are conceded by Alcon.[4]

Alcon also concedes WBDI's arguments concerning the confusing allegations of WBDI's volitional conduct in paragraphs 191-193 of the SAC, including that volitional conduct was not, in fact, pled. WBDI Mot. § III.B.1.b; Opp. 21:10-11 (requesting leave to amend paragraph 193); Anderson Decl. ¶ 79 (same; explaining that Alcon would "argue" another type of volitional conduct).

Another "red-flagg[ed]" legal theory is the vicarious copyright infringement claim that Alcon admits it "drop[ped]" against Tesla and Musk. Anderson Decl. ¶¶ 66, 73(q) (citing SAC ¶ 208). Alcon's counsel, however, further explains that he "crafted what one might call a 'hedged' drop" (*id.* ¶ 66; Opp. 3:19-22), meaning it is *still* asserted against Tesla and Musk "to the extent that there is any argument that ordinary *respondeat superior* liability for copyright infringement needs to be properly plead as a vicarious copyright claim," as opposed to a direct infringement claim.

[4] Alcon argues that intent is relevant to its Lanham Act claim (Opp. 20:11-20), but Defendants' critique relates to the copyright claim, which is based on strict liability principles.

Anderson Decl. ¶ 66 (noting it is "exceedingly likely" that a "vicarious liability theory" does not reach Tesla or Musk). If anything, Alcon's explanation of its "hedged drop" underscores exactly why Defendants are confused. This manner of pleading is particularly violative of Rule 8. And here again, Alcon sidesteps most of Tesla and Musk's arguments concerning this confusing claim. Tesla Mot. § III.B.1.c (explaining that the allegations are confusing, contradictory, and based on an incorrect legal argument). Alcon's counsel merely reiterates that he "find[s] the case law less than fully clear" (Anderson Decl. ¶ 66)—ignoring the Ninth Circuit's decision in *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001), concerning the doctrine of vicarious liability, ***cited by Tesla and Musk in their opening brief***, that shows the law is clear and Alcon's attempt to conflate direct and vicarious liability is improper. Tesla Mot. 15:4-14 & n.4.

Alcon also fails to respond to and thus concedes WBDI's arguments about the internally inconsistent and argumentative vicarious copyright infringement claim against WBDI, which Alcon also "red-flagg[ed]." Anderson Decl. ¶ 73(q) (citing SAC ¶ 212); WBDI Mot. § III.B.2 (explaining that the vicarious claim is confusing and based on improper legal argument). Alcon's argument that "vicarious copyright infringement law should adjusted [*sic*] so that it does in fact cover what happened here" explains why it was drafted so awkwardly and is an admission that it is not legally supported. Opp. 20:21-21:8.

As to the Lanham Act claim, Alcon does not reconcile the contradictory allegations in the SAC that it (a) "owns" the BLADE RUNNER word mark and (b) owns only *non-exclusive* licensed rights to BLADE RUNNER. Tesla Mot. § III.B.2.c. Though Alcon states in its Opposition that it "claims…***non-exclusive*** Lanham Act rights in the wordmark 'Blade Runner'" (Opp. 1:11-13 (emphasis added)), it is unclear whether Alcon is striking its own allegation of ownership in paragraph 245 of the SAC or perhaps even the trademark claim itself. Anderson Decl. ¶ 73(n)

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(providing a non-responsive and confusing statement that does not confirm Alcon's trademark rights and questions whether Alcon "can do anything about [what Musk referenced] legally"). Nor does Alcon address any of the other reasons why its Lanham Act theories are incomprehensible. *See* Tesla Mot. § III.B.2 (arguing, *inter alia*, that Alcon's theory under the "explicitly misleading" prong of the *Rogers* test is unclear, Alcon's theory of "commercial speech" is unclear, and the scope of Alcon's alleged trade dress rights is not finite and is unclear). And in fact, Alcon confirms that it provided only "pictures of trade dress ***examples***" underscoring the indefiniteness issue. Anderson Decl. ¶ 73(n) (emphasis added).

2. Inaccurate Internal References

Defendants also provided specific examples of inaccurate internal references that further add to the confusion. Tesla Mot. 19:7 at n.7; WBDI Mot. 11:15 at n.6. Alcon does not bother to try to clarify the confusion wrought by its inaccurate internal references; in fact, it does not address this issue at all. Counsel claims he took "care to cite to specific factual allegation paragraphs" in the claims for relief "to guard against prejudice to Defendants from potential 'shotgun pleading' issues" (Anderson Decl. ¶ 73(p)), but Defendants fail to see how that is the case when ***every*** Claim for Relief in the SAC starts with a statement that it is based on "each and every allegation set forth in all of the foregoing paragraphs," with a further catch-all that "[t]o the extent any of the allegations or theories in this [claim]…are inconsistent with other allegations or theories pled in [the] SAC, they are pled in the alternative." SAC ¶¶ 187-188, 205-206, 224-225, 243-244.

3. Alternative and Inconsistent Factual Theories

Although Defendants identified specific issues with each of Alcon's alternative and inconsistent factual theories relating to the direct and contributory copyright infringement claims against Tesla and Musk (Tesla Mot. § III.B.1.b) and all of the copyright infringement claims against WBDI (WBDI Mot. § III.C), Alcon makes little

to no effort, either in the SAC or in the Opposition, to make sense of how these theories fit into each of Alcon's claims for relief. Alcon merely argues that Rule 8(d)(2) expressly allows alternative pleading. But pleading in the alternative under Rule 8(d)(2) does not immunize a pleading from the requirement that "[e]ach allegation…be simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). Alternative pleadings must still give the defendant fair notice of the claims against it—and that has not occurred here.

Alcon cites *Molsbergen v. U.S.*, 757 F.2d 1016, 1019 (9th Cir. 1985), and *Coleman v. Standard Life Ins. Co.*, 288 F. Supp. 2d 1116, 1120, n.1 (E.D. Cal. 2003), to support its use of alternative theories—but neither case allows for inconsistent and incomprehensible pleadings. In both, the courts allowed plaintiffs to bring alternative claims, consistent with Rule 8. *Molsbergen*, 757 F.2d at 1018 (finding "the district court erred in construing count two…as an admission against count one"); *Coleman*, 288 F. Supp. 2d at 1119 (allowing plaintiff to plead federal and state claims in the alternative if state claims were preempted). Neither court allowed a plaintiff to make inconsistent factual allegations in support of the same claim for relief. *Cf.* SAC ¶¶ 187, 205, 224, 243 (incorporating by reference all alternative factual theories, including contradictory facts); *id.* ¶¶ 208 (alleging contradictory facts for one claim), 229 (same).

As just one example, Alcon does not respond to the fact that it does not expressly cite to "WBDI Action on Alcon Event Directions to WBDI Theory 2" in ***any*** claim for relief. WBDI Mot. § III.C.1. This begs the question of why this theory is even in the SAC. Perhaps it is too much of a "guess" for even Alcon to rely on. Anderson Decl. ¶¶ 67, 73(o) (noting that certain "information and belief" allegations are "guesses"). Especially when Alcon's counsel explains that he "subjectively believe[s]" that the "Alternative Theory 1s" in the SAC "are likely very close to what actually happened (but I do not actually know; it is still a guess)" (*id.* ¶ 73(o)), it is

unclear how any of the "Alternative Theory 2s" are pled in good faith. Clearly, they were alleged without a proper basis, and to try to circumvent dismissal by confusion and subterfuge.[5]

D. Alcon's Attempts to Deflect Blame Are Not Well-Taken

Rather than take accountability, Alcon deflects blame on Defendants—and the Court. Alcon argues that because "the Court has identified information gaps [Alcon] needs to try to cure on amendment," the Court has "arguably raise[d] the specificity bar on [Alcon] for the [SAC]." Opp. 12:14-21. Alcon also contends that the law "arguably dictate[s]" that it "should be given greater leeway under Rule 8 notice pleading requirements in an amended pleading to plead more facts rather than fewer facts." *Id.* This is not the law. While it is true that a party must correct pleading deficiencies to survive a subsequent motion to dismiss (*see id.* 12:4-13:3), there is nothing in the cases relied upon by Alcon that remotely suggests that a Rule 12 dismissal gives a party "greater leeway" to violate Rule 8. And Alcon did not plead "more facts." It pled alternative theories that have no basis in fact including "guesses" that even Alcon's counsel implies he does not subjectively believe. *See* Anderson Decl. ¶ 73(o). While Alcon's counsel insists that he was "mindful" in "investigating, preparing, and crafting the SAC" (Opp. 13:4-10), dumping all of his "guesses" into an overly long and confusing pleading and arguing that they may fit into all, some, or perhaps none of its claims for relief is improper. As the Court acknowledged in the Tentative Ruling, Alcon could potentially "later uncover information that supports the viability of [its copyright claims]" and "may seek leave to amend at that point to attempt to 'revive' them." Tentative Ruling at 35. Rather than help this case move forward, Alcon's confusing and contradictory "kitchen sink" pleading style has only

[5] Despite ignoring many of Defendants' arguments, Alcon addresses an argument that Defendants did not make and a case that Defendants did not cite. *See* Opp. § V (citing *Earth Island Institute v. United States Forest Serv.*, 87 F.4th 1054, 1071-72 (2023)). Defendants are confounded as to why this argument is included.

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burdened the parties and the Court and delayed this case from moving forward expeditiously.

Alcon's intimations about L.R. 7-3 (Opp. 10:5-9 (citing Anderson Decl. ¶¶ 26-28, 34-37, 41-42, 62, 74-78)) are another example of its deflection. Alcon's expectation that Defendants essentially redline its SAC is much more than what L.R. 7-3 requires and would be highly unusual and likely even prejudicial to Defendants. Anderson Decl. ¶ 75 (explaining that he asked Defendants' counsel if "Defendants have any proposed specific solutions or edits"). Defendants have no obligation to show Alcon how to plead correctly and, frankly, "specific solutions or edits" would not have resolved the matter given the volume of issues that infect the entirety of the SAC. Moreover, as discussed herein, Alcon has not addressed many of the issues raised by Defendants, so it is unclear how additional time meeting and conferring would have made a difference.

E. Alternatively, the Court Can Dismiss Certain Claims Under Rule 12(b)(6)

For the reasons explained in Defendants' moving papers and above, *supra* § II.A, Defendants could not reasonably move under Rule 12(b)(6)—but Alcon ***invites*** such a dismissal, and Defendants do not object. Alcon argues the Court should "consider Rule 12(b)(6)" in addressing this Motion and explains that the Court has "the power to dismiss claims *sua sponte* under Rule 12(b)(6) for failure to state a claim for relief." Opp. 10:12-13, 14:19-21. In his declaration, Alcon's counsel explains that his "red-flagging" approach provides a possible "exit ramp" (i.e., dismissal) and invites the Court to "attack [its] theory." Anderson Decl. ¶ 73(q) (citing SAC ¶¶ 208, 212 (vicarious infringement theories against Tesla and Musk); SAC ¶¶ 251, 254 (trademark infringement)).

Indeed, a "trial court may dismiss a claim sua sponte under Federal Rule of Civil Procedure 12(b)(6)…[and] such dismissal may be made without notice where

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the claimant cannot possibly win relief." *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) (citing *Wong v. Bell*, 642 F.2d 359, 361-62 (9th Cir. 1981), and 5 C. Wright & A. Miller, Federal Practice and Procedure § 1357 at 593 (1969)). This Court, and others in this circuit, have used this inherent authority to efficiently adjudicate disputes. *See, e.g.*, *White v. Anywhere Real Est. Inc.*, No. 2:22-cv-04557-GW-MAAx, 2023 WL 9065954, at *7 n.6 (C.D. Cal. Nov. 9, 2023) (citing *Omar*, 813 F.2d at 991), *adopted*, 2023 WL 9065956 (C.D. Cal. Nov. 21, 2023), *aff'd*, No. 23-4378, 2025 WL 1009559 (9th Cir. Apr. 4, 2025); *Naranjo v. Bank of Am.*, No. 5:23-cv-00546-KK-ASX, 2024 WL 1651914 (C.D. Cal. Feb. 23, 2024) (same).

In its Tentative Ruling, the Court explained that it intended to dismiss under Rule 12(b)(6) Alcon's (i) direct copyright infringement claim against WBDI without leave to amend; (ii) vicarious copyright infringement claim against all Defendants without leave to amend; and (iii) Lanham Act claim against all Defendants with prejudice.[6] Tentative Ruling at 35. Despite being on notice of its pleading deficiencies, Alcon has not fixed the issues previously noted by the Court, and indeed, has conceded it cannot. The Court should dismiss at least the direct copyright infringement claim against WBDI without leave to amend, the vicarious copyright infringement claims against all Defendants without leave to amend, and the Lanham Act claims with prejudice, as it previously contemplated. *Election Integrity Project California, Inc. v. Weber*, 113 F.4th 1072, 1099-1100 (9th Cir. 2024) (failure to come forward with available facts or legal theories to cure pleading deficiencies after being granted leave to amend, or to explain why such acts or legal theories were unavailable can warrant dismissal without further leave to amend).

1. The Direct Copyright Infringement Claim Against WBDI

In its Tentative Ruling, the Court held that Alcon merely alleged that WBDI is a passive supplier of equipment and/or means, which is insufficient to plead volitional

[6] Alcon has since dropped its Lanham Act claim against WBDI. Opp. 3:19-20.

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conduct. Tentative Ruling at 19. The Court noted that "[n]othing that Plaintiff has indicated that it could add by way of amendment would make any difference to that observation/conclusion, because that additional material still relates only to Warner's (failed) efforts at clearance," which "were in no way demonstrative of Warner 'exercising control' or of Warner selecting any material that actually wound up in, or contributed to, the 'We Robot' event." *Id.* There was "nothing *factual* (or that the Court must credit as true) that Warner played any selection-role beyond that failure." *Id.*[7] The SAC still merely alleges that WBDI is a passive supplier of equipment and/or means; it also advances an argument that the Court previously rejected and adds new conclusory allegations despite the Court's warning that they were conclusory. WBDI Mot. 9:18-11:2 & n.4; Tentative Ruling at 25 (finding Alcon's allegations on WBDI's right/ability to supervise/control to be insufficient or "entirely conclusory"). In its Opposition, Alcon seeks leave to "make one specific small amendment to paragraph 193" (Opp. 21:10-11) to "argue," "essentially," that WBDI selected material for upload or storage by "choosing what content Tesla could choose from for the Event from the WBDI conglomerate library, and what content was off limits." Anderson Decl. ¶ 79. But this proposed addition still asserts that *Tesla*—not WBDI—chose the content for Tesla's event. WBDI does not understand what *facts* (rather than argument) Alcon proposes to plead or how they would fit into the already inconsistent narrative pled in the SAC. Even if Alcon could plausibly allege that WBDI chose the content Tesla could choose from for Tesla's event, this falls short of alleging that *WBDI* selected material for upload or storage. Even Alcon's counsel characterizes this as only "***arguably*** a form of selection of material." *Id.* (emphasis added).

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[7] The Court also noted that some of Alcon's allegations made "on information and belief" "[did] not have sufficient facts surrounding the allegation [for Alcon] to make it in this manner." *Id.*; *see also id.* at 24 (describing the same paragraphs of the FAC as "simply assert[ing] – without citation to any facts supporting the assertion, making it an improper/insufficient information-and-belief allegation").

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Critically, he adds that he "do[es] not know of any other facts [he] could reasonably allege for Alcon without discovery." *Id.* The Court should not allow Alcon any more attempts to plead this claim—and Alcon has conceded that it has no other facts to plead.

2. The Vicarious Copyright Infringement Claim Against All Defendants

Alcon's statement that it "drop[ped]" this claim against Tesla and Musk should be reason enough alone to dismiss this claim now. *See supra* § II.C.1. Dismissal with prejudice is also appropriate because Alcon admits it does not plead the two elements of vicarious liability against Tesla and Musk. Tesla Mot. 14:11-18 & n.3; SAC ¶ 208; *see also* Anderson Decl. ¶ 66 (admitting that "legal acrobatics" would be "required to fit Musk and Tesla into a vicarious copyright infringement claim going beyond ordinary *respondeat superior*" and that it is "a game not worth the candle"). Moreover, Alcon conceded Tesla and Musk's arguments concerning this claim, including that vicarious copyright infringement is not tied to the employer/employee relationship, and therefore cannot apply to Tesla and Musk. Tesla Mot. 15:4-14 & n.4.

Alcon also concedes WBDI's arguments. WBDI Mot. § III.B.2. Alcon mentions a new case it believes "seem[s] to start to get pretty close to what it looks like WBDI may have done here" (Opp. 20:21-25), but that case is non-binding and easily distinguishable (and Alcon's description makes clear that not even *it* thinks the case is on point). In *Robinson v. Binello*, 771 F. Supp. 3d 1114, 1119-20 (N.D. Cal. 2025), the plaintiff alleged that his copyrighted sound recording had been "upload[ed]…without his knowledge or permission," copied, and distributed on defendant's online gaming platform. Though the online gaming platform did not itself upload the infringing sound recording, it "approved [the] upload," "***created a copy***," and "stored that copy on [its] server." *Id.* at 1123 (emphasis added). The online

gaming platform was also "paid for each upload or download of the specific infringing work" thereby creating "a clear causal link between infringement and the financial benefit." *Id.* at 1126. Alcon does not allege that WBDI took any such action or had such a direct financial benefit. Dismissal of this claim with prejudice is appropriate because the Court has already considered Alcon's claim in the FAC (Tentative Ruling at 27), and the issues raised at that time have not been resolved.

3. The Lanham Act Claim

Nothing has altered the conclusion that Alcon does not have "any viable Lanham Act claim based on the allegations in the FAC" for several reasons, including that Alcon "cannot succeed under the test set forth in *Rogers v. Grimaldi*, 875 F.2d 994, 999 (2d Cir. 1989)," because the accused work "was an 'expressive' promotional presentation where Musk employed 'Blade Runner' for an 'artistically relevant' purpose, and clearly did not explicitly mislead any consumers as to source or content." Tentative Ruling at 31-32 (footnotes omitted), 34. The Court noted that Alcon had not "suggested a way in which it can amend its Lanham Act claim to overcome the [Court's] analysis. Nor can the Court possibly envision any such way." *Id.* at 34-35. At the hearing on Defendants' motions to dismiss the FAC, Alcon's counsel repeatedly admitted that he did not believe he could overcome *Rogers*. 2025-04-07 Hr'g Tr. at 6:13-15, 10:10-17, 12:4-7, 15:3-8, 16:8-11; Tesla Mot. 17:6-8. As explained in Tesla and Musk's Motion, the SAC nevertheless advances a theory under the "explicitly misleading" prong of the *Rogers* test, and that theory is unclear. Tesla Mot. 16:8-17:12. As noted, Alcon does not address this theory in its Opposition. Alcon instead references a potential new argument, citing *Yuga Labs, Inc. v. Ripps*, 144 F.4th 1137 (9th Cir. June 23, 2025), which, while also unclear, is not relevant.[8]

[8] Notably, Alcon's counsel is unsure whether Alcon will have any arguments to make about the meaning and effects of the *Yuga Labs* decision. Anderson Decl. ¶ 79 (referring to "briefing and argument…***if we have any***" (emphasis added)). He asserts

Opp. 20:1-4; Anderson Decl. ¶ 79. Alcon admits that Rule 12 is an appropriate avenue to dispose of its Lanham Act claim. *See* Opp. 19:18-20:10.[9] The Court should dismiss the claim under Rule 12(b)(6) with prejudice now and not entertain any further briefing on *Rogers*.

F. If An Additional Pleading Is Allowed, Guardrails Are Necessary

While dismissal with prejudice is justified, should the Court allow Alcon a *fourth* attempt to plead any of its claims, Defendants respectfully request that certain guardrails be imposed; at a minimum that the Court order a reasonable page limit commensurate with the number of claims Alcon is allowed to replead and prohibit Alcon's use of appendices. *Olfati v. City of Sacramento*, No. 2:21-cv-00606-WBS-CKD, 2021 WL 5204300, at *2 (E.D. Cal. Nov. 9, 2021) (imposing 40-page limit and collecting cases imposing limits of 25, 40, or 50 pages); Anderson Decl. ¶ 73(h) (conceding that Alcon could remove paragraphs of its appendices or move them into the body of the pleading). Defendants also request that the Court order that the amended pleading not contain legal arguments or case citations. *Morris v. California State Prison, Los Angeles Cnty.*, No. 2:24-cv-04036-RGK(E), 2024 WL 3362852, at *1 (C.D. Cal. July 9, 2024) (collecting cases noting that it is not appropriate for a complaint to contain legal arguments, case citations, or refutation of anticipated arguments). The proper place for legal argument is the parties' briefing. Defendants do not comment on Alcon's counsel proposal for a "chaperone" (Anderson Decl. ¶ 80)

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it is merely "possible" that "facts [he] already know[s] of but ha[s] not alleged, or not alleged in particular combinations, ***could be*** relevant under *Yuga Labs*" but he has "***not yet considered***" it. *Id.* (emphasis added). The Ninth Circuit's decision in *Yuga Labs* pertains to a trademark claim based on the defendant's use of plaintiff's trademark on and competing copies of NFTs, perhaps for satirical reasons. Defendants fail to see that significance of that decision here.

[9] Defendants cited *Dr. Seuss Enterprises, L.P. v. ComicMix LLC*, 983 F.3d 443 (9th Cir. 2020) for the two prongs of the *Rogers* test (Tesla Mot. 16 n.5) and did not make the argument Alcon claims they made. Opp. 19:22-20:1.

except to say that it should be Alcon's obligation to determine what to replead within the page limit mandate.

III. CONCLUSION

For the reasons stated above and in Defendants' Motions, the Court should dismiss the SAC in its entirety with prejudice, or alternatively, dismiss Alcon's direct copyright infringement claim against WBDI, vicarious copyright infringement claim against all Defendants, and Lanham Act claim against Tesla and Musk with prejudice. Should the Court allow Alcon a further opportunity to replead, Defendants respectfully request the Court impose reasonable guardrails on an amended complaint.

Dated: August 28, 2025

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants Tesla, Inc., Elon Musk, and Warner Bros. Discovery, Inc., certifies that this brief contains 6,154 words, which complies with the word limit of L.R. 11-6.1.

/s/ Kristen McCallion
Kristen McCallion

Exhibit 40

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 24-9033-GW-RAOx	Date	September 9, 2025
Title	*Alcon Entertainment, LLC v. Tesla, Inc., et al.,*		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	None Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None Present	None Present	

PROCEEDINGS: **IN CHAMBERS - TENTATIVE RULINGS ON DEFENDANTS TESLA, INC. AND ELON MUSK'S MOTION TO DISMISS SECOND AMENDED COMPLAINT [73]; and DEFENDANT WARNER BROS. DISCOVERY, INC.'S MOTION TO DISMISS SECOND AMENDED COMPLAINT [74]**

Attached hereto is the Court's Tentative Rulings on Defendants' Motions [73, 74], set for hearing on September 11, 2025 at 8:30 a.m.

Initials of Preparer JG

Alcon Entm't, LLC v. Tesla, Inc., et al., Case No. 2:24-cv-9033-GW-(RAOx)
Tentative Rulings on: 1) Defendants Tesla, Inc. and Elon Musk's Motion to Dismiss [] Second Amended Complaint; and 2) Defendant Warner Bros. Discovery, Inc.'s Motion to Dismiss Second Amended Complaint

On April 4, 2025, the Court issued a Tentative Ruling on motions filed in this case seeking dismissal of the First Amended Complaint ("FAC") filed by plaintiff Alcon Entertainment, LLC ("Plaintiff"). *See* Docket No. 61. In that Ruling, the Court – tentatively – indicated that, for reasons explained thoroughly therein, it would grant the motion of defendant Warner Bros. Discovery, Inc. ("Warner") to dismiss Plaintiff's claims for: 1) direct copyright infringement, 2) vicarious copyright infringement, and 3) false affiliation and/or false endorsement under the Lanham Act. *See id.* at pg. 36 of 36. As to the motion filed by defendants Tesla, Inc. ("Tesla") and Elon Musk ("Musk"), the Court – tentatively – indicated that it would grant their motion to dismiss Plaintiff's vicarious copyright infringement and Lanham Act claims. *See id.* The Court further – tentatively – indicated that the dismissal would likely not be with leave to amend, though would only likely be with prejudice as to Plaintiff's Lanham Act claim. *See id.* The Court also explained that it found the defendants' "Rule 8 criticisms very persuasive,"[1] though it did not then see a need to "issu[e] a Rule 8-based decision." *Id.* at n.28. At the same time, it warned Plaintiff that, "if there was ever to be any future pleading in this case, Plaintiff would have to take [the defendants' Rule 8-based criticisms] *very* seriously." *Id.* Ultimately, after hearing oral argument, the Court changed its approach slightly, allowing leave to amend where it had previously indicated no such leave was in the cards. *See* Docket No. 62.

On June 16, 2025, Plaintiff filed a Second Amended Complaint ("SAC"). *See* Docket No. 70. Whereas the FAC had been 64 pages long, containing 188 paragraphs of allegations and attaching three exhibits, *see* Docket No. 37, the SAC – notwithstanding the Court's Rule 8 warnings in its Tentative Ruling on the motions to dismiss the FAC – runs 96 pages (not including appendices and exhibits), with 257 substantive paragraphs of allegations, two appendices and 11 attached exhibits. *See id.*

[1] Rule 8 requires, among other things, that a pleading attempting to state a claim for relief contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

The three defendants reacted to the filing of the SAC (at least so far as the Court's docket is reflective of any reaction) with two new motions to dismiss, one on behalf of Warner and the other on behalf of Tesla and Musk. This time, those motions are based not on Rule 12(b)(6), but squarely on Rule 8. *See* Docket No. 73, at 1:8-9; Docket No. 74, at 1:10-11. However, Plaintiff concedes that a district court has "the power to dismiss claims *sua sponte* under Rule 12(b)(6) for failure to state a claim for relief." Docket No. 75, at 14:19-21.

Along with its Opposition to the current motions, Plaintiff filed what it asserts is a redline composition comparing the changes made between the FAC and SAC. *See* Docket No. 75-4; *see also* Declaration of Edward M. Anderson in Support of Plaintiff's Consolidated Memorandum of Points and Authorities in Opposition to (1) Defendants Tesla, Inc.'s and Elon Musk's Motion to Dismiss Second Amended Complaint; and (2) Defendant Warner Bros. Discovery, Inc.[']s Motion to Dismiss Second Amended Complaint, Docket No. 75-2, ¶ 48. From that document, the Court can examine – before getting to the issue of Plaintiff's Rule 8 compliance – what, specifically, has been added to the SAC[2] that would possibly cure the flaws in the FAC the Court already noticed and addressed when it issued its Tentative Ruling on the Rule 12(b)(6)-based arguments directed at the FAC. As discussed briefly below, the changes have not cured defects in those claims.[3]

First, Plaintiff's efforts presumably to come within *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259 (9th Cir. 1996) for purposes of its vicarious infringement claim[4] by describing Musk as "a Known High Risk to Disregard Intellectual Property Rights and Established Licensing Norms," SAC at 9:12-13 & ¶¶ 27-40, including specifically with respect to BR2049 and the original "Blade Runner" film, do not make

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[2] Despite the addition of over 30 pages to the SAC (as compared to the FAC), the redline demonstrates that Plaintiff also simultaneously *removed dozens* of paragraphs that had been present in the FAC – particularly in the FAC's opening sections – when drafting the SAC.

[3] Aside from its use of the supplied redline-comparison between the FAC and SAC, in making its Rule 12(b)(6) assessment, the Court does not consider the 45-page, 80-paragraph, declaration filed by Plaintiff's counsel in connection with its Opposition brief. *See* Docket No. 75-2.

[4] *See Luvdarts, LLC v. AT & T Mobility, LLC*, 710 F.3d 1068, 1071 (9th Cir. 2013) (setting forth elements of vicarious copyright infringement claim).

this situation sufficiently-analogous to what the situation was in *Fonovisa*. There are no allegations that any of Musk's prior comments and/or behavior in this regard had any connection whatsoever with Warner, whereas in *Fonovisa* third-party vendors "routinely" sold the subject infringing material at the defendant's swap meet, and there was no dispute that the defendant was "aware that vendors in their swap meet were selling counterfeit recordings in violation of [the plaintiff's] trademarks and copyrights," with law enforcement having already raided the swap meet along with a seizure of more than 38,000 counterfeit recordings, and the Sheriff continuing to communicate with the defendant the following year concerning ongoing sale of infringing materials at the swap meet. *Fonovisa*, 76 F.3d at 260-61. Indeed, some of Musk's words/actions Plaintiff has highlighted occurred *after* the event in question here, *see* SAC ¶¶ 27-28, 37, so there is no possibility they could have given Warner sufficient notice to bring this case within the *Fonovisa* rationale.

Allowing Musk and Tesla to "pick and choose" content from a library, *see* SAC ¶ 51, does not amount to Warner having a right to stop, limit or supervise Musk's/Tesla's eventual (alleged) infringing activity. Nor does it amount to *Warner's* volitional conduct or selection of material for purposes of a direct infringement theory against Warner. In addition, while certainly a creative analogy, Plaintiff's assertion that Warner "did the equivalent of putting the Exhibit A image into Tesla's shopping cart, and then moving Tesla into the checkout line," *id.* ¶¶ 58, 71, does not appear to actually be backed up by factual allegations. What *factually* happened is that Warner – either itself or through its subsidiary – attempted to help Tesla get licensing rights to BR2049, but failed to successfully do so. *See id.* ¶¶ 62-63, 71-80, 88, 91 & n.15.

Similarly, Plaintiff's "request[] and direct[ion] that [Warner] . . . actively police against any Musk and Tesla use of BR2049 or any Alcon property in the Event," *id.* ¶ 88, did not give Warner the right or ability for Warner to do so, even if it is true that Warner or Warner's representative responded in a way that Plaintiff "understood" to mean that Warner "would honor and execute on" that request and direction, *id.* ¶ 89.[5] Warner either

[5] None of the "sources" Plaintiff identifies for its "information and belief" allegations about Warner's right and ability to "police" Tesla's/Musk's alleged intellectual property violations, *see* SAC ¶¶ 157(a)-157(g), actually have anything to say about *Warner's* abilities/power here *vis a vis Plaintiff's* content. There is no

intentionally or negligently failing/refusing to comply with Plaintiff's request and/or Warner's alleged promise to Plaintiff, *see id.* ¶¶ 92, 96-98, is effectively irrelevant (at least as to the claims dismissed herein) under the applicable principles. Plaintiff also has not explained how Warner's alleged own contractual ability/right to "suspend or cancel" the event *after an infringement has occurred*, *see id.* ¶¶ 169-173, amounts to an ability to stop, limit or supervise the already-occurred infringement.

Second, also as to the vicarious copyright infringement claim, there is also still no sufficient allegation of a direct financial benefit running to Warner from Musk's/Tesla's alleged acts of copyright infringement. *See, e.g.*, *id.* ¶ 48. There is no allegation that Warner received any financial benefit from the alleged infringing activity itself. *See Range Road Music, Inc. v. East Coast Foods, Inc.*, 668 F.3d 1148, 1155 (9th Cir. 2012). As to Warner, Plaintiff's "direct financial interest" allegations remain conclusory and deficient. *See* SAC ¶¶ 210-212. Perhaps Plaintiff can convince the Ninth Circuit that the element should be understood differently (or that the situation here is sufficiently-analogous to *Fonovisa*), but it will not be this Court that agrees with those assertions.

Third, Plaintiff still does not appear to have resolved the problem with the "direct financial interest" requirement for vicarious infringement as to Tesla and Musk, in particular the case law that states that, to the extent an alleged infringement is merely an "added benefit," this required element is not present/satisfied. *See id.* ¶ 208; *see also Erickson Productions, Inc. v. Kast*, 921 F.3d 822, 829 (9th Cir. 2019). Indeed, the SAC admits that Plaintiff does not attempt to plead such an element. *See* SAC ¶ 208 ("Alcon does not here plead as against Musk and Tesla the 'direct financial benefit' and 'right and

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expressed basis to believe that any "production and direction team," *id.* ¶ 158(a), would have consisted of *Warner* employees or agents. That Warner may have licensed certain of *its* properties to Tesla, *see id.* ¶¶ 158(c)(i)-158(c)(iv), does not mean that its failure to stop Tesla and/or Musk from inappropriately using *Plaintiff's* properties was in violation of any Warner right/responsibility to control. As a result, Plaintiff's "information and belief" allegations relating to this topic are little more than educated guesswork. *See id.* ¶¶ 160-185; *see also Waln v. Dysart Sch. Dist.*, 54 F.4th 1152, 1161 (9th Cir. 2022) ("[A] plaintiff may plead facts on information and belief 'where the belief is based on *factual information* that makes the inference of culpability plausible.'") (emphasis added) (quoting *Soo Park v. Thompson*, 851 F.3d 910, 928 (9th Cir. 2017)).

To be clear here, Plaintiff has obviously attempted to have "information and belief" allegations carry much of its water in getting across the pleading line in this case. Muddying the waters at this stage by such practice is unnecessary, and certainly unhelpful. If Plaintiff discovers a contract giving Warner such a right/ability (consistent with what Plaintiff asserts is standard custom and practice in the industry, or otherwise), it can move for leave to amend under Federal Rule of Civil Procedure 16. Speculative "information and belief" allegations on this point at this juncture are unnecessary, in that light.

ability to supervise' vicarious infringement theory crafted for cases not within traditional respondeat superior liability."). A *respondeat superior* theory does not appear to have any connection to that requirement, missing here. This should not, however, be taken as a ruling that Tesla/Musk cannot be held liable for copyright infringement by way of *respondeat superior*. *See Fonovisa*, 76 F.3d at 262 (explaining that "the normal agency rule of respondeat superior imposes liability on an employer for copyright infringement by an employee" and that the vicarious infringement principle was fashioned to enforce copyrights "against a defendant whose economic interests were intertwined with the direct infringer's, but who did not actually employ the direct infringer"); *Robinson v. Binello*, 771 F.Supp.3d 1114, 1122-23 (N.D. Cal. 2025); *see also* 3 Melville B. Nimmer and David Nimmer, Nimmer on Copyright § 12.04[A][1], at 12-72 (Matthew Bender, Rev. Ed.) (stating, in section *preceding* later section on "vicarious liability," that "[t]o the extent that the infringer is the agent of another, the master can be held culpable for the infringement. If the infringer is the employee of a corporation, as often happens, then the corporation may be held liable.").

Fourth, the "information and belief" allegation – for what *exact* purpose (as to *Warner's* liability), it is unclear, though presumably in support of a direct infringement theory – that Warner or its representatives "transmitted a high resolution digital file of the Exhibit A image to Tesla" for purposes of Tesla's use in the event, *see* SAC ¶ 64, is not supported by factual allegations. In any event, the SAC makes clear that Exhibit A was part of the *failed* "clip license" efforts; it did not appear in Musk's/Tesla's presentation. *See, e.g.*, *id.* ¶ 101. Apart from the information-and-belief allegation in paragraph 64 (and repeated in paragraph 193), there remains no allegation that Warner actually exercised control, selected infringing material, or "instigated any copying, storage or distribution," SAC ¶¶ 192-193. Plaintiff's claim for direct copyright infringement against Warner therefore remains deficient.

Finally, it remains true after the amendments added to the SAC that neither the images nor written words portrayed during the event, nor Musk's spoken words, *explicitly* misled as to source or content, *see* SAC ¶¶ 104-08, 115, notwithstanding any conclusory assertion to the contrary, *see id.* ¶ 124. Implications, inferences and evocations are not enough. *See Brown v. Elec. Arts*, 724 F.3d 1235, 1245 (9th Cir. 2013).

More generally, it is still the Court's clear conclusion that Plaintiff – including with respect to its trade dress allegations, as to which Plaintiff also has still failed to establish that it can or even should be applicable in the instant setting – continues to attempt to shoehorn a copyright foot into a Lanham Act shoe.

Plaintiff's attempt to rely on *Gordon v. Drape Creative, Inc.*, 909 F.3d 257 (9th Cir. 2018), a summary judgment-stage decision, with respect to application of the test set forth in *Rogers v. Grimaldi*, 875 F.2d 994, 999 (2d Cir. 1989), *see* SAC ¶ 251, does not work. In his comments at the event in question (which the Court can permissibly examine under Rule 12(b)(6)), Musk was, if anything, *distancing* and/or *contrasting* his presentation from Blade Runner/BR2049. *See, e.g., id.* ¶¶ 105-06, 108. This is not remotely akin to what happened in *Gordon*. *See* 909 F.3d at 262-63, 269-71.[6]

With the foregoing assessment of Plaintiff's efforts in the SAC, it is now clear to the Court that the Court's first inclination, to decline giving Plaintiff leave to amend, was, in the end, the appropriate one. Plaintiff's Lanham Act claim – which had already been dropped against Warner, in any event – is now dismissed without leave to amend, and with prejudice. Its vicarious copyright infringement claim against Musk and Tesla is also dismissed without leave to amend, and with prejudice. Its direct and vicarious copyright infringement claims against Warner are dismissed, but without prejudice to a future Rule 16 effort to amend the pleadings to reintroduce one or more of those claims against Warner should discovery efforts provide a legitimate basis for Plaintiff to do so.

The Court expects this Rule 12(b)(6)-based ruling will *greatly* simplify the pleadings in this action. If the Court had not taken this step, there is a *very high* chance that the Court would have agreed with the defendants – in substantial part, at the very least – that the SAC presents a Rule 8 problem.[7]

The Court does agree with the Defendants that some measure of "guardrails" are warranted here to rein in Plaintiff's proclivity towards overdoing things for pleading

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[6] *See also*, *Yuga Labs, Inc. v. Ripps*, 144 F.4th 1137 (9th Cir. 2025). There is no similar case here to be made for the proposition that Musk or Tesla were using Plaintiff's marks as a designation of source. *See id.* at 1152-54, 1164-67.

[7] At least at this point in time, there is no chance the Court would have dismissed this case *with prejudice* because of Rule 8.

purposes. Notwithstanding *Twombly/Iqbal* requirements, a complaint is not designed to contain summary judgment- or trial-level detail, not does it serve the purposes of either of those post-discovery stages.

With the elimination of two claims (vicarious copyright infringement and Lanham Act) in their entirety, and one (direct copyright infringement) partially (as to Warner),[8] Plaintiff should not have any difficulty in keeping the next version of its complaint under 20 pages.[9] A version exceeding that length will almost certainly be stricken.

[8] To be clear, there is no reason for the Plaintiff to maintain the now-dismissed claims in a future version of its complaint simply to preserve the appealability of the Court's ruling on those claims. *See Lacey v. Maricopa Cty.*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc) ("We . . . join our sister circuits and overrule in part the rule found in *Forsyth* [*v. Humana, Inc.*, 114 F.3d 1467 (9th Cir. 1997)] and other cases 'that a plaintiff waives all claims alleged in a dismissed complaint which are not realleged in an amended complaint.' For claims dismissed with prejudice and without leave to amend, we will not require that they be repled in a subsequent amended complaint to preserve them for appeal.") (quoting *Forsyth*, 114 F.3d at 1474).

[9] Appendices containing anything other than lists – *i.e.*, an attempt to shift substantive allegations to appendices to avoid the 20-page limitation – will be summarily stricken.

Exhibit 41

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 24-9033-GW-RAOx	Date	September 11, 2025
Title	*Alcon Entertainment, LLC v. Tesla, Inc., et al.,*		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	Terri A. Hourigan	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Edward M. Anderson Regina Yeh	A. Louis Dorny Terry W. Ahearn Kristen McCallion Vivian C. Cheng

PROCEEDINGS: **DEFENDANTS TESLA, INC. AND ELON MUSK'S MOTION TO DISMISS SECOND AMENDED COMPLAINT [73]; and DEFENDANT WARNER BROS. DISCOVERY, INC.'S MOTION TO DISMISS SECOND AMENDED COMPLAINT [74]**

The Court's Tentative Rulings on Defendants' Motions [73, 74], was issued on September 9, 2025 [78]. Court and counsel confer. Based on the Tentative Ruling, and for reasons stated on the record, Defendants' Motions are GRANTED with leave to amend. Plaintiff will have until October 2, 2025 to file a Third Amended Complaint. Defendants' responses are due by no later than October 23, 2025.

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Initials of Preparer JG

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Exhibit 42

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALCON ENTERTAINMENT, LLC, a Delaware Limited Liability Company, Plaintiff, v. TESLA, INC., a Texas Corporation; ELON MUSK, an individual; WARNER BROS. DISCOVERY, INC., a Delaware Corporation; Defendants.	CASE NO. 2:24-CV-09033-GW-RAO **THIRD AMENDED COMPLAINT FOR:** **1) DIRECT COPYRIGHT INFRINGEMENT [17 U.S.C. § 501]** **AND** **2) CONTRIBUTORY COPYRIGHT INFRINGEMENT [17 U.S.C. § 501]** **DEMAND FOR JURY TRIAL**

Plaintiff Alcon Entertainment, LLC ("Plaintiff" or "Alcon") alleges its Third Amended Complaint ("TAC") against defendants Tesla, Inc. ("Tesla"), Elon Musk ("Musk"), and Warner Bros. Discovery, Inc. ("WBDI") (together, "Defendants"):

SUBJECT MATTER JURISDICTION

1. The Court has federal question subject matter jurisdiction per 28 U.S.C. §§ 1331 and 1338(a). This is a civil action arising under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101, *et al.*

NATURE OF THE ACTION

2. Alcon produced the motion picture "Blade Runner 2049" ("BR2049") as a sequel to the original 1982 "Blade Runner" motion picture ("1982 Picture"). Alcon is the ultimate sole copyright owner of all rights in BR2049. Defendants jointly conducted an October 10, 2024 Tesla marketing event from WBDI's studio lot in Burbank, California (the "Event"). Musk and Tesla exploited protected elements of BR2049 for the Event without Alcon's authorization.

3. WBDI intentionally induced, caused and materially contributed to Musk and Tesla's infringing conduct, with motives to favor Musk and Tesla over Alcon. Among other acts, WBDI caused its subsidiary and Alcon's BR2049 domestic distributor, non-party WB Studio Enterprises, Inc. dba Warner Bros. Pictures ("WBP"), to authorize, or promise to authorize, Tesla's BR2049 usage for aspects of the Event. WBDI knew, or should have, that this violated WBP's distribution license from Alcon. The BR2049 usage occurred on WBDI-owned systems. WBDI disregarded Alcon's prophylactic and remedial requests.

4. Alcon brings direct copyright infringement claims against Musk and Tesla and contributory copyright infringement claims against WBDI.

FACT CHRONOLOGY

5. ***WBP***. Non-party WBP, in its current corporate incarnation and prior variations, has been a "major" Hollywood motion picture studio since 1923.

6. ***The 1982 Picture.*** The 1982 Picture starred Harrison Ford as Deckard, a "blade runner," the 1982 Picture's fictional name not for Ford's character, but rather his character's profession: a hunter and killer of rogue artificially intelligent humanoid robots or "replicants." WBP was and is the distributor of the 1982 Picture. It was produced by The Blade Runner Partnership.

7. ***The Alcon-WBP Relationship***. Alcon is an independent motion picture and television producer headquartered in Los Angeles, formed in 1997. At all relevant times, it had robust cash resources. Between about 1998 and 2019,

WBP distributed Alcon-produced motion pictures by a contractual arrangement where Alcon received access to WBP's distribution system in exchange for very favorable financial terms from Alcon to WBP, all highly beneficial to both sides.

8. Under this model, WBP was the original (and in most cases still current) at least domestic distributor for more than thirty Alcon-produced motion pictures, including BR2049 and "The Blind Side." The Alcon-WBP contract terms for each picture use a common base, making an Alcon-WBP course of dealing and performance about twenty-five (25) years deep as of 2024. Alcon had and has strong marketing and reputational protections in WBP treatment of Alcon pictures. WBP actions which might associate Alcon property with a controversial licensee require WBP to consult Alcon first. Musk qualified as controversial. Alcon and WBP had a very amicable history, without any litigated disputes before the Event.

9. ***Alcon, WBP, and 1982 Picture Rights***. In 2011, Alcon acquired many rights in the 1982 Picture and underlying properties from The Blade Runner Partnership's successor, including exclusive rights to make 1982 Picture derivative works. By its own transactions, WBP became the ultimate exclusive copyright owner in distribution rights to the 1982 Picture as is. WBP also became the owner of associated physical chattel, including 1982 Picture prop cars.

10. ***BR2049.*** BR2049 was theatrically released on October 6, 2017 and registered the same day with the U.S. Copyright Office (registration number PA0002056792), with Alcon as author. Non-party Sony Pictures Entertainment Inc. ("SPE") was and is the licensed international distributor. WBP's BR2049 distribution license from Alcon expires in 2029.

11. BR2049 tells the story of its main character, "K," played by Ryan Gosling. K is a replicant who is also a "blade runner," tasked with hunting and killing his own kind. K's human supervisors assign him to find a missing child suspected to be from natural childbirth to a replicant mother, a possibility threatening to the existing human-AI societal power balance. BR2049 poses an

existential societal question: "will humans and their AI creations choose to relate to each other in a partnership that creates a mutually beneficial society, or will they reject partnership and invite apocalypse?" K drives an artificially intelligent, autonomously-capable, flying car throughout BR2049.

12. BR2049 was and is widely distributed. It received popular and critical acclaim, including numerous awards. It was and is regularly identified as one of the best science fiction movies ever on lists of such things. It was and is available on U.S. streaming and digital rental services. A DVD of BR2049 (with some auto branding from the theatrical release edited out) is in the record (ECF 51).

13. ***BR2049 Auto Brand Licensing.*** There was and is an established market for automobile brands to license from motion picture or TV rights holders the right to use copyright-protected elements of the works to promote car products and brands. Alcon uses this market to monetize its creative works, including BR2049. During BR2049 pre-production and production, car brands bid competitively for licensed affiliation with BR2049. The winning contract price was a $500,000 cash payment from the brand to Alcon, and a promised $30 million media spend by the brand, to co-promote both the brand and BR2049. This was all in exchange for ten (10) non-consecutive seconds BR2049 screen time where the brand would appear, mostly with K and K's car. The number of seconds, their divisibility, and exclusivity, were all fiercely negotiated, as is typical in the market. Non-exclusive licenses are less appealing to brands and command lower prices.

14. WBP's personnel participated in the above bid process. Alcon and WBP had about an eight (8) year history on BR2049 licensing issues by the time of the Event. WBP had never had nor claimed to have authority to communicate with a car brand about a BR2049 license without Alcon's fully informed prior approval. WBP has business affairs executives with deep knowledge of the Alcon-WBP relationship terms and rapid access to Alcon's co-CEOs, and a documentary record of Alcon-WBP past communications on auto brand licensing issues and protocols.

15. ***Musk, Tesla and Their Pre-Existing Marketing Interest in BR2049.*** Tesla is a developer and manufacturer of electric cars, founded in about 2003. Musk soon became CEO and controlling shareholder. Tesla emphasizes artificial intelligence ("AI")-based autonomous driving capabilities in marketing its cars.

16. Largely due to Tesla stock holdings, Musk is the world's richest man and was at the time of Event. In addition to Tesla, Musk directly or indirectly owns and operates the social media platform X (formerly Twitter), the rocket and satellite company SpaceX, and the AI company X.AI Corp. ("X.AI"), among other ventures. X.AI runs "Grok," an AI system with image generation functions.

17. Musk excels at non-traditional marketing, including through memes and other very short-form communications. Musk frequently markets his companies and their products by opportunistic associations with science fiction properties. Musk had and has a well-known disdain for intellectual property ("IP") law, including copyright law. He was and is infamous for not paying for IP uses in memes or other marketing, even where other commercial parties would and do.

18. Musk was well-known for having applied his above traits to make Tesla the largest car company in the world by market capitalization with almost no use of traditional paid advertising.

19. The 1982 Picture and BR2049 were and are known favorite Tesla marketing tools. For instance, in 2019, Musk made public displays of literal copies of quantitatively small, but qualitatively significant, 1982 Picture elements, for the purpose of linking the real-world time and location which Musk had selected for Tesla's cybertruck product reveal to the 1982 Picture's fictional setting (*i.e.,* "Los Angeles, November 2019"), in order to amplify cybertruck publicity and marketing. In the November 2019 reveal event itself, upon information and belief, Musk intended to reference BR2049 to set that event's theme. The public and press understood him that way. (*See, e.g.,* E. Howell, "Elon Musk's Cybertruck from Tesla Is Straight Out of Blade Runner and James Bond," Space.com, Nov.

23, 2019, https://www.space.com/elon-musk-cybertruck-blade-runner-james-bond-inspiration.html.) The words "blade runner" in common parlance are frequently used as a shorthand for BR2049. Musk is known for imprecise usage of the words, including as to whether he is referring to the 1982 Picture, BR2049, Deckard, or K.

20. Musk and Tesla never sought or received Alcon's permission for any of the foregoing uses of BR2049 elements. However, up until the October 2024 Event, to Alcon's knowledge, Musk and Tesla had never engaged in literal copying or actionable substantial similarity copying of BR2049 elements.

21. ***WBDI.*** WBP is an old, established entity as to both Hollywood and Alcon; WBDI is a new and different one in both contexts. WBDI was formed in April 2022 by merger of Discovery, Inc. with WBP's then-direct or -indirect parent, AT&T, Inc. The merger resulted in limited WBDI working cash and large debt, which WBDI planned to service partly by disrupting existing Hollywood motion picture and television industry business models, including by using content owned or controlled by WBDI subsidiaries to support the larger WBDI's needs. The merger resulted in WBDI owning the Burbank studio lot and improvements.

22. ***Defendants Engage About the Event.*** Sometime before September 6, 2024, Tesla expressed interest to WBDI about the possibility of the Event. Titled "We Robot," it would and did reveal Tesla's new AI-driven, purportedly fully autonomous robotaxi (or cybercab), and "Optimus" humanoid AI robot products, in order to solicit investment and advertise the new Tesla products to consumers.

23. Plaintiff alleges paragraph 23 upon information and belief: Musk and Tesla wanted to reveal the new Tesla products on the WBDI studio lot in substantial part to facilitate opportunistic marketing association with Hollywood motion pictures, especially BR2049. Musk and Tesla were indifferent to obtaining IP licenses. They would if WBDI required it, but only if such licenses were not priced or characterized as car brand affiliation licenses, a business model which Musk and Tesla refuse to support.

24. The Event had two aspects: 1) an in-person presentation and activities, conducted for physically present attendees numbering in the hundreds; and 2) a livestream of parts of the in-person Event, displayed to a worldwide audience. A recording of the livestream aspect of the Event is in the record (ECF 25) ("Event Recording"). Upon information and belief, the in-person aspect of the Event was negotiated and planned first, and, until near the actual start time of the Event, separately from the livestream aspect, at least as to the issues herein.

25. ***WBDI Causes WBP To Authorize, or Promise to Authorize, Tesla to Use BR2049 for the In-Person Event.*** Plaintiff alleges this paragraph 25 upon information and belief: WBDI (or a nominal WBDI contracting entity actively directed by WBDI) and Tesla contracted for the in-person aspect of the Event by September 6, 2024, and spent September 6 through October 10, 2024 planning it together. **Alternative Theory 1A:** ECF 23-1 [redacted]/ECF 32 [sealed unredacted]) is authentic, and was at least an initial WBDI-Tesla contract for the in-person Event, before or separately from Tesla licensing IP from WBDI or subsidiaries. **Alternative Theory 1B:** The document is not authentic or was superseded and not a governing contract at the Event time, but WBDI provided at least the level of resources for the in-person Event as in ECF 23-1/ECF 32.

26. Plaintiff alleges paragraph 26 on information and belief: WBDI allowed Musk and Tesla to review the WBDI conglomerate's IP content library to select content desired for the in-person Event. Musk and Tesla requested, and WBDI caused one or more of its subsidiaries to enter into IP license agreements with Tesla for in-person Event usage of: (a) "Westworld"; (b) "Mad Max"; (c) the Batmobile; and (d) Deckard's car ("56 Sedan") from the 1982 Picture. Except "Mad Max," the foregoing IP is visible on the Event Recording; "Mad Max" IP appears on social media of Event attendees. Studios generally require paid licenses for IP uses and ECF 23-1/32 on its face required written consent for uses of IP from at least the WBDI conglomerate. (ECF 23-1/32 Terms and Conditions,¶ 12.)

27. At some point during this shopping-in-the-WBDI-content-store in-person Event preparation process, Tesla requested use of BR2049 for the in-person Event of at least **Image A** below for Musk's keynote speech:

28. Image A appears in BR2049 at about run-time 1:37:55. It is qualitatively significant to BR2049 -- arguably its most recognizable still image. It was the publicity image for theatrical release promotion, and it is still the cover image to BR2049 trailers on YouTube and other platforms. It is from BR2049's core "Las Vegas Sequence" (BR2049 at 1:36:28-1:37:59, 1:40:28-2:01:50). In the sequence, K explores a ruined, radioactive Las Vegas to encounter the long-lost Deckard (reprised by Harrison Ford), the story's dramatic climax. It has distinctive imagery, with orange lighting, and K often shown duster-clad in silhouette or near-silhouette, surveying or exploring urban ruins.

29. WBP knew, or had reason to know, that it could not grant the request, and had to reject it or inform Alcon of it immediately. WBDI used shared services personnel (*i.e.,* personnel who provide services to both WBP and WBDI and do or should know Alcon-WBP relationship terms) to relate to Tesla about the request. They included Julie Heath ("Heath"), a former WBP employee and Alcon licensing liaison for years prior to WBDI's inception. By 2024, Heath was a WBDI employee, with a WBDI email address and signature blocks. Heath told Alcon in phone conversations on October 10 and 16, 2024 that she was being directed by WBDI, and Alcon alleges that she was. WBDI knew or had reason to

know what WBP knew about BR2049 rights, or is chargeable with knowing it.

30. Sometime prior to October 10, 2024, without informing Alcon, WBDI caused WBP either: **Alternative Theory 2A:** to authorize Tesla to use Image A for Musk's in-person Event keynote remarks, or **Alternative Theory 2B:** to promise Tesla that WBP would do so, with an (inaccurate) representation that WBP had sufficient rights to do so, all in a way upon which Tesla relied. WBDI never contested prior to the action that at least one of these had occurred. Including from Heath's information to Alcon that by October 10 Tesla had already been provided a high resolution digital copy of Image A (inferentially, by WBDI or WBDI-directed WBP), authorization was not merely promised, but fully given.

31. ***WBDI's Relative Motivations.*** WBDI had motives to favor Musk and Tesla's interests over Alcon's. Upon information and belief, Tesla agreed to pay, or actually paid, WBDI substantial money for the Event rights and WBDI resources. At the time, Musk also was poised to become even more powerful and influential than he already was, by a close relationship with Donald J. Trump preceding the November 2024 U.S. Presidential election. Based on third party press reports, on information and belief, WBDI's CEO David Zaslav was actively courting a relationship with Musk, including to benefit WBDI, contemporaneously with WBDI-Tesla Event deal-making (*e.g.,* Musk and Zaslav were photographed together at the U.S. Open on September 8, 2024, two days after ECF 23-1/32 was countersigned by Tesla). Upon information and belief, they discussed the Event and Musk's satisfaction with it was important at the highest levels of WBDI.

32. At the same time, in the months prior to the Event, significant friction had developed in the WBDI-Alcon relationship. Alcon had complained about uses of Alcon IP (specifically "The Blind Side") which WBDI and a non-WBP subsidiary had made without Alcon's authorization, to WBDI's benefit and Alcon's detriment, in a way prohibited for WBP itself as Alcon's "The Blind Side" distributor to do. Alcon also had commenced buying interests in the financially

troubled Village Roadshow's share of motion picture properties jointly owned by Village Roadshow and WBDI subsidiaries. WBDI had made clear to Alcon that WBDI did not want Alcon to do that and was hostile to Alcon about the situation.

33. ***Tesla's International BR2049 Rights Request.*** At a time unknown precisely to Alcon, but very near the Event's scheduled start, Tesla requested that WBDI cause WBP to add rights to use Image A in the worldwide livestream aspect of the Event, or WBDI otherwise learned that Tesla wanted such rights. That required rights even farther beyond WBP's domestic BR2049 distribution license.

34. Plaintiff alleges this paragraph 34 on information and belief: WBDI's shared services personnel communicated to Tesla that such rights were beyond what any WBDI entity could grant. By that time, Musk and Tesla had relied on using Image A in planning the Event, including Musk's keynote. Heath received a contact from a WBDI senior executive who communicated to Heath in essence that Musk and Tesla's satisfaction was important, such that Heath should help Tesla get international rights. (Heath told Alcon in an October 10 call, *infra* ¶ 37, that this happened, though Heath declined to name the WBDI senior executive in question.)

35. As a result, at about noon PDT on October 10, 2024, WBDI (through Heath) and Tesla (separately) first contacted SPE. The Tesla personnel involved in these communications included David Adametz (a Tesla video production executive) and Shara Lili (a Tesla Manager of Video Content). Upon information and belief, Adametz and Lili were in direct or indirect contact with Musk, and the October 10 communications which reached Tesla also reached Musk.

36. SPE directed both WBDI and Tesla to Alcon. Tesla never contacted Alcon. Heath did. At about 1:00 pm PDT on October 10, 2024, Heath disclosed to Alcon that WBDI had caused WBP to authorize, or promise to authorize, Tesla to use Image A for the in-person aspect of the Event, but had just learned that Tesla also wanted international rights for a worldwide livestream. Heath communicated that WBDI was requesting Alcon to grant Tesla international rights. WBDI did not

request that Alcon grant Tesla permission for the in-person Event usage. (Indeed, Heath argued to Alcon – incorrectly -- in the October 16, 2024 call with Alcon, discussed at ¶ 46 *infra*, that the WBDI-directed WBP did not need any Alcon permission to authorize in-person or livestream BR2049 use by Tesla domestically.) Heath balked at Alcon's email request to WBDI and SPE that both companies communicate to Tesla that Tesla had no permission for any BR2049 usage, not even for the in-person Event; Heath asked that only SPE communicate a rights denial, with none communicated to Tesla from WBDI. This Heath response led to an about 2:00 p.m. PDT October 10 phone call between Heath and Alcon.

37. As a result of all of the foregoing communications: (a) SPE communicated directly to Tesla only that international rights to use Image A were denied; (b) Alcon communicated to WBDI's Heath in the 2:00 p.m. PDT call, that: (i) no BR2049 usage was authorized for any aspect of the Event; (ii) only Alcon could authorize any BR2049 use by Tesla or Musk, and never would, including because Alcon was concerned about Musk's increasing polarity and brand toxicity; (iii) WBDI and WBP must communicate all of the foregoing directly to Musk and Tesla, in clear terms, and not rely only on SPE's communicated denial of international rights; and (iv) WBDI and WBP also should actively guard against any Musk or Tesla usage of BR2049 in any aspect of the Event in any way.

38. Alcon reasonably understood Heath's response during the 2:00 p.m. phone call to mean that WBDI and WBDI-directed WBP would execute on all of these requests; Heath certainly did not communicate to Alcon that WBDI and WBP would not do so. After information gained after initial filing of this action and the First Amended Complaint, Alcon is now informed and believes most likely that **Alternative Theory 3A:** WBDI did not comply with any of Alcon's paragraph 37(b)(i)-(iv) requests. This means, *inter alia*, neither WBDI nor WBDI-directed WBP ever withdrew WBP's invalid Image A in-person Event use authorization, or promised authorization, to Tesla, nor did they communicate to

Tesla that WBP's rights were insufficient to give it. Rather, the only information which Musk and Tesla received after the October 10 communications above among Alcon, WBDI, and SPE, was SPE's communicated denial of international rights. **Alternative Theory 3B:** WBDI and the WBDI-directed WBP complied with Alcon's paragraph 37(b)(i)-(iii) requests, but not 37(b)(iv) (actively guard).

39. ***Musk and Tesla Use AI to Generate an Alternative Image.*** Musk and Tesla only had five hours or so to adjust their Event plans to the new information above. They created **Image C** below using an AI image generator:

40. Plaintiff alleges this paragraph 40 upon information and belief. **Alternative Theory 4A:** Musk and Tesla (or their employees or agents acting within the scope of their employment or at Musk and Tesla's direction) generated Image C by: (i) copying Image A or even the full BR2049 work (or qualitatively significant portions), into an AI image generator, and (ii) then asking the AI to make "an image from the K surveying ruined Las Vegas sequence of 'Blade Runner 2049,'" or a similar direction. They did so intentionally to exploit BR2049 in ways they knew were not authorized. **Alternative Theory 4B:** The same as Alternative Theory 4A, except what Musk and Tesla claim was a "licensed image" not from BR2049 also was given to the AI as an additional ingredient to train the AI or for the AI to use as part of image generation, but the AI still relied on literal copying of BR2049.

41. Comparison of Image C to Image A and other images ("Images B") from BR2049's Las Vegas Sequence is below:

42. BR2049 run-time locations for Images B are: B1 (1:36:53); B2 (1:37:28); B3 (1:41:08); B4 (1:51:39); B5 (1:58:20); B6 (1:58:20).

43. ***Musk Uses Image C to Set The Event's Theme.*** The Event was scheduled to begin at 7:00 p.m. PDT, but at least the livestream did not begin until about 8:00 p.m. PDT. In an introduction, Tesla representative "Franz" said: "Just want to thank Warner Brothers for hosting us here. As you know, this is the birthplace of many epic films – many of them depicting a vision of the future." He then said: "We're here tonight to experience that future, that is closer than you

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think. And who better than Elon, right, to show us that future." The livestream then shifted to Musk using a robotaxi to traverse the WBDI studio lot to the stage.

44. On stage, Musk spent about a minute on welcoming remarks and explanations of in-person Event activities. He commenced his keynote by saying: "So you see a lot of sci-fi movies where the future is dark and dismal, where it's not a future you want to be in." As he spoke, the display changed to a less than two-second image of Earth from space at sunrise, with the words "What Kind of World Do We Want to Live In?" Then, the display shifted to Image C, displayed for about 11 seconds, during which Musk said: "You know, I love 'Blade Runner,' but I don't know if we want that future. I believe we want that duster he's wearing, but not the, uh, not the bleak apocalypse." Image C was replaced by other images, with Musk discussing wanting a happier future, and how happy his vision of cities and highways filled with driverless robot cars would be and why.

45. The display occurred on the WBDI lot over WBDI systems, to an in-person audience of hundreds, and livestreamed and re-posted by Tesla, Musk, X, and others thousands of times, with millions of total U.S. and international views.

46. ***Post-Event, Pre-Suit Communications and Defendant Conduct.*** On October 16, 2024, Alcon telephoned Heath to express Alcon's dissatisfaction, and to request information about what happened. Heath provided further information about what happened leading up to the October 10 communications, but refused to provide any meaningful information about what happened afterward. Alcon is informed and believes that WBDI had at least some information that could assist Alcon in enforcing its rights against Musk and Tesla, but withheld it from Alcon. WBDI and WBDI-directed WBP failed to do anything remedial at all.

FIRST CLAIM FOR RELIEF

Direct Copyright Infringement Against Defendants Tesla and Musk

47. Alcon exclusively owns all relevant copyrights in the registered original work of authorship BR2049. (¶¶ 2, 9-10.) Musk was the active and

conscious force behind the activity herein. Musk and Tesla, or their employees or agents acting within the scope of employment or at Musk or Tesla's direction and control, actually copied BR2049 without Alcon's authorization, (¶¶ 2, 12, 27, 30, 33, 39-42), and their copying constituted unlawful appropriation as follows:

48. ***Literal Copying.*** Violation of Alcon's exclusive reproduction rights under 17 U.S.C. § 106(1) by the conduct alleged in paragraphs 39 and 40.

49. ***Substantial Similarity Copying.*** Creation of (i) Image C and (ii) the Event Recording (the 11 seconds containing Image C) (the "Infringing Works"). (¶¶ 24, 27-28, 30, 33.) Each Infringing Work incorporates the following BR2049 protected elements, in violation of Alcon's exclusive reproduction and derivative work rights under 17 U.S.C. § 106(1) and (2) (¶¶ 10-11, 27-28, 33-34, 39-44):

50. The Character K. K is the "story being told" in BR2049, which is told primarily from his perspective, through the lens of his emotional journey. K goes from an unquestioningly obedient, cold-blooded killer of his own kind, untroubled by his own lack of a soul or moral implications of his actions, through an emotional middle act where he questions everything and believes he might have a soul, to a final act where that possibility is shattered. K makes an existential decision to reject his prior existence and become a disobedient, empathetic, selfless, rebel against the system he once served. K is distinctively delineated, including visually. He is most visually distinctive when depicted as a duster-clad "blade runner" with close-cropped hair viewed in silhouette or near-silhouette, surveying or exploring a post-apocalyptic ruined cityscape bathed in orange light.

51. Urgent Human-AI Relationship Theme. The theme of the societal human-AI relationship being at a critical point, where a choice to partner to build a joint society or not is urgent, and wrong decisions will lead to apocalyptic ruin. BR2049's theme expression in the Las Vegas Sequence juxtaposes orange versus non-orange lighting. Elements of a more happy or hopeful past or future stand out by the absence of orange lighting, either from a fragment of a scene (hologram

miniature Sinatra; Deckard's hydroponic garden), or for a full scene (K's fight with Deckard in the ruined hotel casino holo lounge). More negative present-time or possible futures are expressed in orange lighting, darkening and intensifying as decision urgency increases. Autonomously capable AI-driven cars take characters alternatively toward and away from right or wrong answers. (To see the orange/non-orange lighting and cars toward-and-away expressions in the Event Recording, portions of it on either side of the infringing 11 seconds must be considered, *e.g.*, Musk's ride to the stage, the Earth viewed from the moon at sunrise slide before the 11 seconds, and slides of urban parks and greenery after the 11 seconds.)

52. Mood of Anxiety, Fear and Urgency, Specifically About the Human-AI Relationship Question. BR2049 uses apocalyptic backstory elements, combined with specific visual elements such as orange lighting, urban ruin, and the K figure in silhouette or near-silhouette surveying or exploring the ruined post-apocalyptic landscape, to create a mood of anxiety, fear, and urgency, around the human-AI relationship question and making the right decisions about it.

53. Setting. The setting of a post-apocalyptic urban ruin, specifically as a place that holds answers or important information about the human-AI relationship question, bathed in orange light, and especially one that is about to be explored by a male blade runner in a duster shown in silhouette or near-silhouette, with the blade runner shown in the foreground standing or walking, and skyscrapers shown in the distance in faded, darker orange, moving into browns.

54. Selection and Arrangement of Elements. (1) a male blade runner; (2) duster-clad; (3) with close-cropped hair; (4) viewed from behind or nearly so; (5) in silhouette or near-silhouette; (6) shown in the foreground; (7) surveying or exploring a ruined city; (8) the setting is post-apocalyptic; (9) the scene is bathed in orange light; (10) distant skyscrapers are shown in faded, darker orange moving into browns; (11) society faces a critical decision whether humans and AI will

build a joint society or not; and (12) in the science fiction movie genre context.

55. Musk and Tesla, or their employees or agents acting within the scope of employment or at Musk or Tesla's direction and control, violated Alcon's 17 U.S.C. § 106(5) exclusive public display rights in BR2049 by the Infringing Works, (i) to an in-person audience of a substantial number of persons outside of a normal circle of a family and its social acquaintances, and (ii) livestreamed to millions of U.S. viewers. (¶¶ 3, 24-25, 45, Event Recording.)

56. On information and belief, Musk and Tesla intended for the audience to understand Image C, including as presented in the Event Recording, to be an illustration of a scene from BR2049's Las Vegas Sequence, and a substantial part of the audience so understood it. (¶¶ 23, 27-28, 33-34, 39-44.)

57. At the time of the Event, Alcon was producing a BR2049 derivative work limited TV series titled *Blade Runner 2099*, and discussing with a car brand an exclusive licensed affiliation. Musk and Tesla's infringements interfere with Alcon's ability to grant license exclusivity, damaging BR2049's value to Alcon.

58. Musk and Tesla's conduct constitutes copyright infringement in violation of 17 U.S.C. § 501, *et seq.*, and was done intentionally, recklessly, or with conscious disregard of Alcon's rights and was willful within the meaning of 17 U.S.C. § 504(c). Alcon is entitled to and seeks the relief in the Prayer.

SECOND CLAIM FOR RELIEF

Contributory Copyright Infringement Against WBDI

59. There was direct infringement as set forth in the First Claim for Relief. WBDI, knowing of, with reason to know of, where it should have known of, or with willful blindness to, the infringing activity, induced, caused, or materially contributed to the infringing conduct of Musk and Tesla, and WBDI's participation in the infringing conduct was substantial, as follows:

60. WBDI contracted with Tesla, with WBDI providing its studio lot, resources and personnel, to Tesla for at least the in-person aspect of the Event. (¶¶

2-3, 21-22, 24-26, 36-38, 45, ECF 23-1/32.) WBDI knew or had reason to know that Musk and Tesla were known risks to infringe BR2049. (¶¶ 17-19, 27, 31:24-27, 33-34, 37.) WBDI knew of, or had reason to know of, Alcon's rights that Musk and Tesla not make unauthorized use of BR2049, especially not through WBP. (¶¶ 3, 7-10, 13-14, 27-29, 33-37.) Upon information and belief, WBDI formed a subjective belief of infringing activity and failed to investigate or act, constituting willful blindness, at the following points: a) Tesla's initial Image A request (¶¶ 27-29); b) October 10 communications (¶¶ 34-38); c) Musk's keynote (¶¶ 43-45); and d) October 16 WBDI-Alcon call (¶ 46). Upon information and belief, WBDI never involved the WBP business affairs executives with Alcon-WBP relationship knowledge, (¶ 14), as those executives would have then contacted Alcon and worked to address the issues, and never did, or checked the Alcon-WBP communication history on auto brand licensing of BR2049. (*Id.*)

61. WBDI impermissibly included BR2049 as IP available to Tesla for the Event through WBDI or WBDI-directed WBP. (¶¶ 3, 7-8, 13-14, 26-29.) WBDI also caused WBP to authorize, or promise to authorize – to Musk and Tesla's reasonable reliance, including with an inaccurate representation that WBP had the legal right to make the authorization -- Musk and Tesla's use of Image A for the in-person aspect of the Event. (¶¶ 3, 7-8, 13-14, 24-30, esp. 30.)

62. Under Alternative Theory 3A, WBDI did not execute Alcon's ¶ 37(b)(i)-(iii) requests, and misled Alcon at least by material omissions that WBDI would do so; Alcon could have and would have acted for itself if WBDI had said that it would not. (¶¶ 35-38.) Upon information and belief, this increased infringement risk by, *inter alia*, Musk and Tesla believing that the WBDI-directed WBP controlled rights to authorize all BR2049 domestic usage (including, *e.g.*, derivative works), affecting their risk assessment (*e.g.*, for U.S. infringement, if any, Musk and Tesla would be dealing with the friendly WBDI and not Alcon).

63. WBDI also failed to take prophylactic steps against Musk and Tesla's

possible infringing activity following Alcon's express request that WBDI do so. (¶¶ 3, 37-38.) Even if WBDI's contractual IP enforcement rights were only limited to IP owned by WBDI or subsidiaries, there appears to have been no prohibition, and upon information and belief there was no prohibition, on WBDI at least notifying Musk and Tesla, and the Event display production team (whoever hired and controlled that team) of what Alcon requested in ¶ 37(b)(i) and (ii). Upon information and belief, WBDI-Tesla IP livestreaming terms had not been finalized by the time of the October 10 Alcon-WBDI phone call, and WBDI could have added simple protective contractual terms, such as requiring Tesla to provide a keynote script in advance for WBDI clearance, or that livestream production crew (whoever hired them) follow WBDI clearance directions about BR2049.

64. Under the circumstances here, where WBDI caused WBP to hold itself out to Musk and Tesla as having BR2049 rights which WBP does not have, and ostensibly based on an Alcon-WBP distribution contract that does impose duties on WBP, and one relatively close to expiration; and where WBDI misled Alcon at least by material omission that WBDI would execute Alcon's paragraph 37(b)(i)-(iv) requests, (¶¶ 3, 7-8, 25-30, 37-38), WBDI had a duty to Alcon to take prophylactic and remedial measures at least as described in paragraph 63.

65. It was reasonably foreseeable that WBDI's overall conduct would result in Musk and Tesla infringing BR2049, even if not by Image A use specifically, and substantially contributed to infringement. Infringement occurred on the WBDI studio lot over WBDI-owned systems with use of WBDI resources. (¶¶ 3, 25, 45 and ECF 23-1/32 esp. at ¶¶ 3, 4.4, 4.7 and "Studio Services" and "Production Services" sections at pages 8 and 9 therein; on information and belief, the "Studio Services" and "Production Services" were provided by WBDI.)

66. Post-Event, WBDI refused to provide Alcon with information to assist investigation of the infringement, even though Alcon asked WBDI to do so; further failed to reprove Musk or Tesla, denounce their conduct or do anything else

remedial. Under the circumstances here, WBDI had a duty to Alcon to do all of the foregoing. (¶¶ 3, 7-8, 13-14, 21, 26-30, 33-38, 46.)

67. WBDI acted with motives to favor, and, upon information and belief, intentionally to favor, Musk and Tesla over Alcon. (¶¶ 3, 15-20, 23, 31-34.)

68. WBDI's conduct constitutes contributory infringement in violation of 17 U.S.C. § 501, *et seq*., and was intentional, reckless, or willfully blind and in conscious disregard of Alcon's rights, and was willful within the meaning of 17 U.S.C. § 504(c). Alcon is entitled to and seeks the relief requested in the Prayer.

Prayer for Relief

Plaintiff prays for judgment against Defendants, and each of them:

a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying or publicly displaying BR2049 or protectible elements thereof or making derivative works thereof, without Alcon's authorization.

b. Per 17 U.S.C. § 503, for impoundment of all copies of Image C, including Event Recording copies containing Image C, and underlying materials used to create Image C, and all related records and documents.

c. For actual damages and infringement-derived profits, 17 U.S.C. § 504(b), or, at Plaintiff's election, statutory damages, 17 U.S.C. §§ 504(c), 512.

d. For an award of attorneys' fees per 17 U.S.C. § 505.

e. For an award of pre-judgment interest as allowed by law.

f. For costs of suit.

g. For such further relief as the Court deems just and proper.

DATED: October 2, 2025 ANDERSON YEH PC

By _____
Edward M. Anderson
Attorneys for Plaintiff ALCON ENTERTAINMENT, LLC

WB_0002814

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, on its claims against Defendants Tesla, Inc. ("Tesla"), Elon Musk ("Musk"), and Warner Bros. Discovery, Inc. ("WBDI"), Plaintiff Alcon Entertainment, LLC hereby demands a trial by jury of all matters triable to a jury.

DATED: October 2, 2025

ANDERSON YEH PC

By _____
Edward M. Anderson
Attorneys for Plaintiff ALCON ENTERTAINMENT, LLC

Exhibits 43-60

[Filed Under Seal]

Exhibit 61

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
	Case No. 25-10475 (TMH)
VILLAGE ROADSHOW ENTERTAINMENT GROUP USA INC., *et al.*,	(Jointly Administered)
	Courtroom No. 7
	824 North Market Street
Debtors.	Wilmington, Delaware 19801
	Friday, August 22, 2025
	11:00ap.m.

TRANSCRIPT OF STATUS CONFERENCE HEARING
BEFORE THE HONORABLE THOMAS M. HORAN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Justin Bernbrock, Esquire
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
321 North Clark Street
32nd Floor
Chicago, Illinois 60654

For Warner Bros.: Scott Drake, Esquire
O'MELVENY & MYERS LLP
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Suite 1600
Dallas, Texas 75201

(APPEARANCES CONTINUED)

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (CONTINUED):

For Alcon Media Group: Vadim Rubinstein, Esquire
LOEB & LOEB LLP
345 Park Avenue
New York, New York 10154

(Proceedings commenced at 11:11 a.m.)

THE COURT: Good morning, counsel. This is Judge Horan. We're on the record in *Village Roadshow Entertainment Group USA, Inc.*

I apologize for the late start. I was finishing up a 10 o'clock hearing and I appreciate everybody's patience while you were in the waiting room.

Mr. Bernbrock, good morning. Good to see you.

MR. BERNBROCK: Good morning, Your Honor. Good to see you as well. I trust the summer was nice.

THE COURT: Very good, yeah. Thank you.

MR. BERNBROCK: Your Honor, for the record Justin Bernbrock of Sheppard, Mullin, Richter & Hampton, counsel to the debtors.

The request for today's status conference was made by counsel to Warner Bros., and I would be inclined to invite them to speak to the Court first.

THE COURT: Certainly. Mr. Drake, good morning.

MR. DRAKE: Good morning, Judge. Thank you for hearing us on short notice.

As Mr. Bernbrock said, Warner Bros. requested this -- for the record, Scott Drake of O'Melveny & Myers on behalf of Warner Bros. Judge, you saw our letter. Let me just explain why we thought a status conference made sense. We thought it was the easiest way to raise this issue of

bifurcation and wanted to try and avoid a full motion practice if possible. So, again, we appreciate the Court's willingness to hear this today.

As you saw from our letter, Warner Bros. believes bifurcating the derivative right sale hearing makes sense to preserve estate resources and avoid significant professional fee expenses. As I will get into, Judge, there is a threshold issue that has to be litigated eventually and I don't think even Village disputes that. So, we believe it is appropriate to consider that threshold issue of who was, in fact, the highest bidder on the derivative rights first.

Before I expand on why we believe bifurcation is appropriate, I want to respond to just a couple things in Village's letter from yesterday.

The first is they say there is -- Village says there is no procedural or substantive basis for bifurcation. I think the procedural basis is clear, Judge. We cited to Section 105(a) and Rule 7042. You also have in your inherent power to control your docket and ability to do that. So, I don't think it can be meaningfully disputed that if Your Honor thinks bifurcation is appropriate you can do it.

We think this case or this hearing is appropriate for bifurcation, as I will get into momentarily but the other thing from Village's letter I wanted to address, Judge, is Village says that Warner Bros. is a disgruntled bidder that

lacks standing to challenge the auction. So, I think its important to address that first. Warner Bros. isn't just a disgruntled bidder who came up short at an auction. They -- Village cites these cases about an unsuccessful bidder not having standing to contest the results of an auction. Those cases, Judge, are about true outsider bidders who came to an auction but they're not parties in interest. And that is the key distinction.

THE COURT: Yeah, I think I can short circuit that, Mr. Drake. Clearly, Warner Bros. is a very significant creditor in this case. They certainly have standing to raise these issues. I don't have any problem with the notion of Warner Bros. having standing to raise the issues.

MR. DRAKE: Okay. I will skip that argument. Thank you, Judge. I appreciate you short circuiting that.

So, again, we believe there is a threshold issue that should be resolved before we litigate the much more complex and costly substantive objections to the Alcon sale. And, again, I think it's important for the purposes of today's status conference.

What we are arguing -- what Warner Bros. is arguing today is bifurcation appropriate or not. We don't intend to litigate today was Village's decision to pursue the Alcon sale over the Warner Bros. sale reasonable.

Again, just to touch on it, as you saw in our

letter, the math is pretty simple, right; 18.5 versus 17.5. I don't think Mr. Bernbrock disputes. We're talking about a $1 million difference. But its not just the gross difference, of course. The key question is what is the net recovery of pursuing that incremental $1 million.

The important thing, Judge, is that I don't think they can dispute the cost to litigate all the substantive objections Warner Bros. has asserted is going to eat up the entirety of that $1 million difference, right. I mean if we just look at this status conference today, we have 50 people tuning in, many of which are professionals being paid for by the estate. This is costly litigation and so we wanted to bring this to the Court's attention today before -- we didn't want to get to October 20th and have all that money spent and it can't be recovered.

So, if we talk about bifurcation, why is it appropriate? It's appropriate because this is a threshold issue. The issue of which bid was, in fact, the highest is a threshold issue and the debtors don't dispute that. In fact, if you look at their letter in the last paragraph, I think the second to last line, the debtors say on a factual -- full factual record at the sale hearing the debtors intend to demonstrate that they exercise their business judgment in a fair and reasonable manner throughout the sales process.

So, they concede, Judge -- Village concedes this

issue has to be litigated. Warner Bros. position is it's a threshold issue and if Warner Bros. prevails, and we don't have to get into whether or not Warner Bros. prevails, but its an issue that they admit has to be litigated.

If Warner Bros. does prevail, that Warner Bros. bid was, in fact, the highest bid, the Court never has to entertain all of the substantive objections and they're much more complex. It surrounds the consent rights and the contracts. It concerns intellectual property rights. It concerns copyright issues. It concerns financial accommodations.

We can avoid all of that expense. We can avoid all the depositions between now and October. We can avoid the written discovery, the production of documents. We could avoid all that by having a phase one hearing solely on the issue of the highest bid.

Notably, Judge, much of what Village says in their letter is about their business judgment and why they think the Alcon bid was, in fact, higher. That is not for today. Those are not arguments against bifurcation. Those are merits arguments that the Court is going to have to hear and we believe it should be sooner rather then after we spend all the money on the substantive objections.

So, Judge, they say -- Village also says in their letter that their goal has always been to maximize the value

of the estate. We don't think their decision on the derivative rights does that but, again, that is for another day. But if Village truly wants to maximize the value of the estate, they should agree that this threshold issue is decided and depending on how Your Honor rules, we can either move forward or not but why spend all this time and money if we never have to get there.

So, with that, Judge, I think the same arguments they make about -- Village makes -- well, if Village pivoted to Warner Bros. Alcon might sue. Again, that is a merits argument on whether the decision was appropriate. It's not an argument for or against bifurcation because, again, as Village concedes, all of these issues are going to have to be determined by the Judge at some point.

So, Judge, I think the only other comment Village makes in its letter is that the issue of the selection of the successful bidder is inextricably intertwined with the substantive objections. I would admit, that is an argument against bifurcation, not a merits argument, but its not correct. Judge, if we had a phase one issue solely on which bid was, in fact, the highest, the Court doesn't actually have to rule on whether these agreements are financial accommodations, whether Warner Bros. consent rights do apply or not.

The Court doesn't actually to rule on the merits.

All the Court would have to do is weigh the two bids, and I don't think this will be disputed, those substantive, complex and costly objections only exist if the debtor moves forward with Alcon because Alcon cannot make those same objections because Warner Bros. is the counterparty to the derivative rights agreements. So, the only party that can make those arguments is Warner Bros. So, that is all you would have to do in phase one, Judge, is weigh that one party has objections that the other party doesn't. You wouldn't actually have to determine or rule on any of those objections.

So, I think, Judge, with that I would, again, just say we have done this now because as Mr. Bernbrock and I discussed a schedule for October 20th, I think we certainly realized and I would like to think Mr. Bernbrock would admit, we all recognized this was going to be timely and costly. So, in Warner Bros. view this was an appropriate time to raise this issue and recommend to the Court for efficiency and preservation of asset purposes that the Court heard it in a bifurcated manner.

So, again, I thank you for your time, Judge. I will reserve some time for rebuttal.

THE COURT: Certainly, Mr. Drake.

Mr. Bernbrock -- well, actually, let me ask: Is there anybody else who supports bifurcation before I return

to Mr. Bernbrock?

(No verbal response)

THE COURT: Okay, I hear no response.

Mr. Bernbrock.

MR. BERNBROCK: Thank you, Your Honor. Justin Bernbrock of Sheppard, Mullin, Richter & Hampton, counsel to the debtors.

I too appreciate the dispute with which the Court was willing to hear this issue and can appreciate that no one likes to have things dropped in their lap without much notice. So, we certainly appreciate the accommodation in that regard.

Your Honor, what I just heard Mr. Drake argue to me, at least, is sort of the classic definition of the logical fallacy of question begging, which is assuming the validity of the conclusion as a component of the argument. See, the argument that Warner Bros. is making is that the debtors errored in their business judgment by selecting Alcon as the highest and best bidder because the value of Warner Bros. objection rights exceeds $1 million. But for that to be truly tested there has to be a full and fair briefing and analysis of the Warner Bros. objection rights.

So, we can't -- it would not be appropriate for the debtors and, candidly, even the Court at a preliminary stage to ascribe a credit or value to these objection rights

without a full and fair opportunity to brief them and, if necessary, conduct discover with respect to the objection rights. We can't just ascribe value to something without the opportunity to test the validity of that value. So, that is principally why we think that bifurcation is not appropriate under the circumstances.

I appreciate that Mr. Drake raised Rule 7042 and some of the case law in that area talks about bifurcation when "The issue to be tried must be so distinct and separate from the others that a trial of it alone may be had without injustice. If the issue as to be separated is not so distinct but involves the same factual and legal arguments, then bifurcation is improper." That is the *In Re Tomlin* case, 2002 Westlaw 32136199 from The Norther District of Texas Bankruptcy Court. And that has been cited favorably by the Third Circuit in *Branch v. Temple University*, that's 2023 Westlaw 3993016. So, we don't think that 7042 gets there in this regard.

The standing point is a little bit more philosophical in the sense, in the jilted bidder or the frustrated bidder cases that exist. They really go to this idea that a bidder ought not be permitted to use litigation as a sword when it was not the highest and best bidder at an auction. If Warner Bros. wanted to have the highest and best bid coming out of the auction, it had the opportunity to bid

in an amount greater then $18.5 million.

I would say that that possibility or certainly that exists today. We would be more then happy to welcome a bid in an amount greater then $18.5 million. I think that we would have an obligation to consider any such bid. I think that, candidly, that goes a little bit to why the derivative rights sale hearing has been adjourned and pushed out.

As the Court is aware, we collectively attended a mediation and this component of the parties relationship was an issue or was at issue in connection with that mediation. So, it felt appropriate, under the debtors business judgment, to leave open the possibility that there would be a consensual resolution with respect to this bundle of assets.

So that, hopefully, gives a little bit of an explanation to parties in interest who were not directly involved in the mediation as to why we had not gone forward on the derivative rights sale. In the wake of the mediation, it became apparent to the debtors that we needed to move this process forward because there was not going to be meaningful resolution at this time.

The last point I want to make here, and I think it's a critical one, and I really do appreciate the concern that Warner Bros. has expressed about the estate and about resources for the estate. Warner Bros. is tantamount to an oversecured perfected secured creditor because there is a

bank account that contains $110 million reserved for the benefit of Warner Bros. in the event that there is a claim that is upheld by the arbitration panel because right now Warner Bros. has a contingent unliquidated claim. But if there is a claim and its in an amount at or less than $110 million, we have the funds set aside to pay that claim in full.

So, the harm to the estate really is borne by the senior secured noteholders who I think want to press forward with the highest bid that was received at the auction in the amount of $18.5 million to Alcon.

With that, Your Honor, I don't have anything further. I am certainly happy to answer any questions the Court has or address any other points.

THE COURT: Thank you, Mr. Bernbrock. I certainly understand the debtors position.

Mr. Drake.

MR. DRAKE: Thank you, Judge.

Just two quick points. One, Judge, to the last point Mr. Bernbrock made that Warner Bros. was tantamount to an oversecured creditor. We mentioned it in our letter. I didn't cover it in my remarks just because I was trying to be brief. It's not just the matrix claim and the matrix reserve Warner Bros. is concerned about. As we outlined in our letter, in the debtors reply to their sale motion and in the

Rosenberg declaration, Ms. Rosenberg is a partner at Sheppard Mullin, the debtors took the position that Village could reject the derivative right agreements and sell merely an unrestricted copyright interest to Alcon. We, of course, do not accept that position that they have any ability to do that but the debtors have raised that as a possibility in their filings.

In the event Village rejected the derivative rights agreements, Warner Bros. believes it would have significant rejection damages because of the fact, under this theory, Alcon would presumably take the position they -- Alcon had an interest in the copyrights and could do whatever they wanted with them. Alcon could develop their own films, Alcon could use the copyright interests without the restrictions of the derivative right agreement and if that happened, which is a scenario Village has raised as a possibility, Warner Bros. would have significant rejection damages that would far exceed what would be left in the reserve which was designed, as you know, Judge, in the DIP order to really address just the matrix claim. So, I wouldn't accept that position and because of the threat of these rejection damages, its why Warner Bros. is focused on preserving what is left in the estate outside of the reserve.

The last point, Judge, I would say most of Mr. Bernbrock's arguments didn't actually apply to bifurcation.

It applied more to the merits. The only argument I heard on bifurcation was that the Court would have to rule on the substantive objections and Mr. Bernbrock also raised some case law. I am not going to cite cases on bifurcation, Judge. I think it's well within your discretion to do this or not, whatever you think is appropriate.

Again, the Court is not going to have to rule on the objections. It merely needs to consider that Warner Bros. is the only party that can assert these objections. Alcon could not. The math is simple. It's not just the closing risk, whether it eats into the $1 million delta, the fees alone are going to do that.

And, again, Judge, I think you wouldn't have to rule on the substantive objection, you have to say is the debtors decision reasonable, the economics don't support it. Instead of are they acting on some other basis. Ad we have a record that we don't need to get into today but at the hearing its very clear, from the first day of this hearing, Mr. Maib said "The relationship between Village and Warner is irreparably decimated." Judge, we believe their acting not out of reasonableness or smart economics. They're acting out of emotion because of the damaged relationship.

So, again, we think bifurcation makes sense. Its efficient. Its less costly and if Mr. Bernbrock prevails on all of his merits arguments, then we can move to phase two

and deal with the substantive objections but we would like to try to knock this out in a less costly and more efficient manner.

So, unless you have any questions, Judge, again, thank you for your time and consideration.

THE COURT: Thank you, Mr. Drake.

Is there anybody else who would like to be heard before I move ahead?

MR. RUBINSTEIN: Yes, Your Honor. Vadim Rubinstein of Loeb & Loeb, counsel for --

THE COURT: Good morning, Mr. Rubinstein.

MR. RUBINSTEIN: Good morning, Your Honor.

So, Your Honor, we were not offered the opportunity to submit a letter brief. So, we are responding to what we saw on the docket. First, what I would like to -- I think its quite interesting that Mr. Drake here is focused on procedure on August 22nd, 2025 when we have a bid procedures order that was entered on April 24th, 2025 to which Warner Bros. objected. And with respect to which it got $110 million reserve. And under which it did not seek an order establishing a value for its objection claims or litigation claims in connection with its derivative rights bid.

Your Honor allowed an expense reimbursement to Alcon, in connection with the sale of $2.5 million. All

creditors knew exactly what it would take, should they want to overbid Alcon. When the case was filed there was a $12.5 million overbid requirement which Alcon met to become the stalking horse bidder. It was provided notice of the economics of the transaction that it had to defeat and it did that.

Warner Bros. not once before it lost at the auction raised this issue with this Court. In fact, Your Honor, not until four other bidders were eliminated at the auction and the price was driven up to $17.5 million -- I'm sorry, $18.5 million did Warner Bros. raise this issue for the first time after all the due diligence was done, after the five bidders came into the auction, after looking at Warner Bros. lead bid that ascribed zero value to its objection rights.

THE COURT: Let me interrupt you on one thing, Mr. Rubinstein, does any of this go to the bifurcation issue? I appreciate that Alcon would want to stake out its grounds but I'm focused on the bifurcation issue which is the matter before me today.

MR. RUBINSTEIN: Well, in terms of the bifurcation issue, Your Honor, I would say this issue should have been litigated previously and I will tell you why. How can you -- how do we litigate the bifurcation issue until we know the extent of the discovery that is appropriate under the

circumstances. We know that Warner Bros. is going to want discovery far afield. We believe that discovery here should be very minimal. These are legal issues.

The issue is that we have -- can we provide adequate assurance of future performance. I see that, Your Honor, as a potential issue subject to discovery. We never -- we don't know what the discovery is going to entail and you can be sure, Your Honor, I imagine, if you rule, that it shouldn't be bifurcated. That is exactly what Warner Bros. is going to do. They're going to try to bury the estates in discovery to prove the point after the fact. This should have been done before the fact. At this point we're shooting in the dark.

I mean, what should we have done at the auction at this point. Should we have bid $19.5 million or should Warner Bros. have bid $19.5 million. We had no guidance as to how to proceed at that point. The rules were set and now after Warner Bros. ran out of money and decided no longer -- that it no longer wanted to bid, it wields yet a new piece of consideration that was nowhere in their bid.

To tell this Court that now their bid is higher and better because its worth, at least $1 million, Your Honor, and it will rid you of the headache of having to deal with these legal issues. So, what you are being told is Warner Bros. does not want to address these rights

substantively. Its willing to pay $17.5 million so that it doesn't have to address them substantively but it wasn't willing to pay $19.5 million. And now they have made the decision, at the auction -- Your Honor, after Alcon bid $18.5 million there was about a four-hour break until we heard this news, okay.

We were sandbagged at the auction. This should have happened beforehand. And now we are told that they are making this procedure so much more expensive that you shouldn't allow it to proceed. They have requested this status conference, Your Honor. Its making this process even more expensive. They want to bifurcate it and its going to make it even more expensive. They are going to want to expand the --

THE COURT: Okay. I think I understand the point. Alcon wants to have a single hearing and doesn't want to bifurcate.

Does anyone wish to be heard or shall I move on?

(No verbal response)

THE COURT: Okay. I hear no response.

MR. BERNBROCK: Your Honor.

THE COURT: Yes.

MR. BERNBROCK: I'm sorry, its Justin Bernbrock from Sheppard Mullin. May I be heard very, very briefly.

THE COURT: Briefly.

MR. BERNBROCK: Warner Bros. did flag and raise all -- well not all but the meat and potatoes, as it were, of their objections in their bid submission that was reviewed and analyzed by the debtors. So, they were on record on these points and that was acknowledged on the record at the auction. So, I don't want that to be lost in the mix here that they absolutely flagged these issues.

THE COURT: Okay. I am not going to bifurcate. I view these as fairly -- these are issues that I deal with all the time. I don't think that threat of litigation from a bidder who was not named the successful bidder is an appropriate reason to break up the proceedings. I don't accept the notion that the debtor is acting out of emotion and implicitly is not observing its fiduciary duties in connection with this transaction. I don't accept that at all.

So, we are going to go ahead and do this when scheduled, I think you said the date is October 22nd. I haven't heard anything that suggests there would be an appropriate basis even though I have the authority to do so, to bifurcate these proceedings. If discovery becomes an issue in the meantime, everybody knows where to find me and I can deal with any of those issues but that is what we're going to do.

Anything else for today?

MR. BERNBROCK: Your Honor, I was going to raise

this on -- we have a hearing on Tuesday but just from a housekeeping perspective -- sorry, again, Justin Bernbrock, Sheppard Mullin, counsel for the debtors. The September omnibus hearing that we were given is, I believe, the 23rd of September which falls right in the middle of Rosh Hashanah. I don't know that we have anything pending for that hearing as of now but I just wanted to ask in advance if folks could participate virtually.

THE COURT: Certainly. I would be happy to make every accommodation, of course.

MR. BERNBROCK: Thank you, Your Honor.

THE COURT: Thank you for raising that point, Mr. Bernbrock.

Well then, I will see you on Tuesday morning. Until then, have a good weekend. We are adjourned.

(Proceedings concluded at 11:41 a.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling August 29, 2025

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

Exhibits 62-64

[Filed Under Seal]

Exhibit 65

LexisNexis

User Name: Casey Sawyer
Date and Time: Saturday, October 4, 2025 11:53 AM EDT
Job Number: 264477957

Document (1)

1. *Svenhard's Swedish Bakery v. Bakery (In re Svenhard's Swedish Bakery)*
Client/Matter: -None-
Search Terms:
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
	-None-

Svenhard's Swedish Bakery v. Bakery (In re Svenhard's Swedish Bakery)

United States Court of Appeals for the Ninth Circuit

May 20, 2025, Argued and Submitted, San Francisco, California; September 12, 2025, Filed

No. 23-60045

Reporter
2025 U.S. App. LEXIS 23641 *; 2025 LX 328143; __ F.4th __; 2025 WL 2627837

In re: SVENHARD'S SWEDISH BAKERY, Debtor.SVENHARD'S SWEDISH BAKERY, Appellant, v. BAKERY AND CONFECTIONARY UNION AND INDUSTRY INTERNATIONAL PENSION FUND, Appellee.

Prior History: **[*1]** Appeal from the Ninth Circuit Bankruptcy Appellate Panel. BAP No. 23-1001. Gan, Lafferty III, and Brand, Bankruptcy Judges, Presiding.

Svenhard's Swedish Bakery v. United States Bakery (In re Svenhard's Swedish Bakery), 653 B.R. 471, 2023 Bankr. LEXIS 2125 (Aug. 29, 2023)

Summary:

SUMMARY*

Bankruptcy

The panel affirmed, on a different ground, the Bankruptcy Appellate Panel's decision affirming the bankruptcy court's order denying Chapter 11 debtor in possession Svenhard's Swedish Bakery's motion to assume and assign a contract.

The bankruptcy court denied the motion because the contract was not "executory" within the meaning of 11 U.S.C. § 365(a) and, in the alternative, because the contract was a "financial accommodation" and therefore not assumable or assignable under § 365(c)(2). The Bankruptcy Appellate Panel affirmed on the first ground, leaving the second undecided.

The panel affirmed on the second ground, holding that the contract was a financial accommodation and therefore not assumable or assignable. The contract was a settlement agreement between Svenhard, a commercial bakery that had sold its business to United States Bakery and had closed one of its facilities, and the Bakery and Confectionary Union and Industry International Pension Fund. The Pension Fund asserted that, under the Employee Retirement Income Security Act, Svenhard was subject to withdrawal liability and delinquent-contribution **[*2]** liability. Under § 365(c)(2), a debtor in possession is prohibited from assuming or assigning any contract "to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor." Consulting Black's Law Dictionary, the panel concluded that the ordinary and common meaning of "financial accommodation" at the time of enactment of § 365 included contracts to forebear or reduce payments to which one was otherwise entitled, if those contracts were agreed upon to aid a debtor's poor financial condition. The panel concluded that the settlement agreement was plainly such a contract, and therefore was not assumable or assignable.

Counsel: Derrick Talerico (argued), Weintraub Zolkin Talerico & Selth LLP, Los Angeles, California, for Appellant.

Joshua B. Shiffrin (argued), Cole Hanzlicek, and Joshua A. Segal, Bredhoff & Kaiser PLLC, Washington, D.C.; Daniel L. Egan, Wilke Fleury LLP, Sacramento, California; for Appellee.

Judges: Before: Marsha S. Berzon, Michelle T. Friedland, and Salvador Mendoza, Jr., Circuit Judges.

Opinion

Per Curiam Opinion

PER CURIAM:

The Bankruptcy Code limits the circumstances under which a debtor's contracts survive bankruptcy proceedings. In particular, under *§ 365 of the Bankruptcy Code*, a "debtor **[*3]** in possession"—"a debtor that is the subject of a Chapter 11 case and who

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

has not been ousted from possession by the appointment of a Chapter 11 trustee," 8 Michael A. Wolf, *Powell on Real Property* § 57A.02 (2025)—may, subject to court approval, "assume or reject any executory contract" to which the debtor is a party and, if the executory contract is assumed, may assign the debtor's rights and obligations under that contract to another person or entity, *11 U.S.C. § 365(a)*, *(f)*; *id. § 1107(a)*. But that power is subject to exceptions. As relevant here, a debtor in possession is prohibited from assuming or assigning any contract "to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor." *Id. § 365(c)(2)*.

In this case, the bankruptcy court denied a motion to assume and assign a contract brought by Debtor-Appellant Svenhard's Swedish Bakery ("Svenhard"). The bankruptcy court held that the particular contract to which Svenhard is a party is not "executory" within the meaning of *§ 365(a)* and, in the alternative, that it is a "financial accommodation" and therefore not assumable or assignable under *§ 365(c)(2)*. The Bankruptcy Appellate Panel ("BAP") affirmed on the first ground, leaving the second undecided.

We affirm **[*4]** on the second ground, holding that the contract is a financial accommodation, without reaching whether it is executory.

I.

A.

Svenhard was a commercial bakery that owned facilities in Oakland, California, and Exeter, California. Svenhard had long been a participating employer in the Bakery and Confectionary Union and Industry International Pension Fund ("the Pension Fund") and so was obligated to make pension contributions on behalf of certain employees covered by and participating in the Pension Fund.

In early 2014, financial difficulties prompted Svenhard to sell its business to United States Bakery ("USB"). As part of that sale, Svenhard agreed to transfer the Exeter facility and its equipment to USB, to lease the Exeter facility and its equipment back from USB for five years, and to close the Oakland facility. In 2015, Svenhard proceeded to close the Oakland facility and to move its operations to Exeter. As part of that process, Svenhard terminated its Oakland workforce and stopped contributing to the Pension Fund.

The Pension Fund notified Svenhard that it believed that Svenhard had effectively withdrawn from the Pension Fund and was subject to two liabilities under the *Employee Retirement Income Security Act of 1974 ("ERISA")*: a withdrawal **[*5]** liability of approximately $50 million (capped by ERISA to approximately $39 million) and a delinquent-contribution liability of more than $500,000 for failing to make severance and vacation payouts. Svenhard did not timely contest those liabilities through the procedures provided by ERISA. *See 29 U.S.C. § 1399(b)*. Instead, Svenhard gave the Pension Fund financial information describing Svenhard's "limited assets."

The Pension Fund ultimately agreed to settle Svenhard's liabilities ("Settlement Agreement") for a significantly reduced amount, to be paid in monthly installments over twenty years. Specifically, Svenhard promised to pay $12,500 each month for 240 months (totaling $3 million) to satisfy the withdrawal liability. Svenhard also agreed to pay the delinquent-contribution liability, with interest, in monthly installments of $8,580.80. The Settlement Agreement expressly indicated that the Pension Fund agreed to that arrangement because, after reviewing Svenhard's financial information, the Pension Fund concluded that pursuing the full value of its claims against Svenhard "would almost certainly cause . . . secured creditors to assert their rights to Svenhard's assets, leaving little or nothing for **[*6]** the Pension Fund" to recover. The Settlement Agreement further stated that the reduced monthly payments would likely allow Svenhard "to be able to pay while continuing to operate its business." A few months later, however, Svenhard ceased operations and defaulted on the Settlement Agreement.

B.

Around the same time that Svenhard defaulted on the Settlement Agreement, it filed a Chapter 11 bankruptcy petition. In those proceedings, USB filed a motion to convert Svenhard's bankruptcy from Chapter 11 to Chapter 7. The bankruptcy court denied that motion, and USB appealed—first to the United States District Court for the Eastern District of California, which dismissed the appeal for lack of jurisdiction, and then to our court. While that appeal was pending in our court, Svenhard, USB, and a committee of Svenhard's unsecured creditors participated in a mediation

facilitated by the Ninth Circuit Mediation Program. Although the Pension Fund was one of Svenhard's unsecured creditors, it recused itself from the mediation at Svenhard and USB's request.

Through that mediation, Svenhard and USB reached a conditional compromise to settle their litigation. That compromise was contingent upon, among **[*7]** other things, a ruling from the bankruptcy court allowing the Settlement Agreement between Svenhard and the Pension Fund to be assumed by Svenhard and assigned to USB.

C.

Pursuant to its compromise with USB, Svenhard filed two motions in bankruptcy court. First, Svenhard filed a motion for approval of the compromise under *Federal Rule of Bankruptcy Procedure 9019*. Second, Svenhard filed a motion under *§ 365* to assume the Settlement Agreement as an "executory" contract and to assign it to USB "as a valid and subsisting contract." The Pension Fund opposed Svenhard's motions, contending that the Settlement Agreement could not be assumed or assigned under *§ 365* and that a proceeding on a motion to assume and assign was not an appropriate proceeding in which to decide the validity of the Settlement Agreement.[1]

The bankruptcy court denied Svenhard's motion to assume and assign on two grounds: first, that the Settlement Agreement is not "executory" within the meaning of *§ 365(a)*; and, second, that it is a "financial accommodation" that cannot be assumed or assigned under *§ 365(c)(2)*. The bankruptcy court declined to decide whether the Settlement Agreement is a **[*8]** "valid and subsisting" contract, reasoning that it would be procedurally improper to do so on a motion to assume and assign.

Svenhard appealed to the BAP, which affirmed the bankruptcy court's decision that the Settlement Agreement is not "executory" without deciding whether it is a "financial accommodation" under *§ 365(c)(2)*. The BAP also affirmed the bankruptcy court's refusal to decide the validity of the Settlement Agreement. Svenhard timely appealed.

II.

We have jurisdiction under *28 U.S.C. § 158(d)*. "Because appeals from the BAP are subject to *de novo* review, [we] independently review[] the Bankruptcy Court's decision. We review conclusions of law *de novo* and conclusions of fact for clear error." *In re Vortex Fishing Sys., Inc., 277 F.3d 1057, 1064 (9th Cir. 2002)*.

Svenhard argues that the Settlement Agreement can be assumed under *11 U.S.C. § 365(a)* because it is "executory." Svenhard further argues that the financial-accommodation exception under *§ 365(c)(2)* does not apply because the Settlement Agreement is "not a contract to make a loan, nor is it a contract to extend money or credit to Svenhard[]." We need not and do not decide whether the Settlement Agreement is "executory" because—even if we were to accept that the Settlement Agreement is "executory"—we conclude that it constitutes a "financial accommodation" **[*9]** that is not assumable or assignable under *§ 365(c)(2)*.

We begin with the text of the Bankruptcy Code. *Section 365(c)* provides that a debtor in possession "may not assume or assign any executory contract . . . if . . . such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor." *11 U.S.C. §§ 365(c)*, *1107(a)*.[2] In interpreting that provision, we apply the "fundamental canon of statutory construction . . . that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, [and] common meaning." *Perrin v. United States, 444 U.S. 37, 42, 100 S. Ct. 311, 62 L. Ed. 2d 199 (1979)*.

Because Congress did not define the term "financial accommodations," "'we follow the common practice of consulting dictionary definitions . . .' and look to how the term[] [was] defined 'at the time [the statute] was

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[1] The Pension Fund has asserted that the Settlement Agreement is voidable for fraud because Svenhard "failed to disclose to the Pension Fund the scope of its relationship with USB, let alone that USB was covertly encouraging negotiations to reduce the outstanding liabilities owed to the Pension Fund." Those issues are the subject of separate litigation in the United States District Court for the District of Oregon. *See Bd. of Trs. of the Bakery & Confectionary Union & Indus. Int'l Pension Fund v. U.S. Bakery, et al.*, No. 3:21-cv-00617-SI.

[2] *Section 365(c)* refers to the "[t]he trustee." *Section 1107(a)* provides that a debtor in possession "shall have all the rights . . . and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter," subject to certain exceptions not relevant here.

adopted'" to determine that term's ordinary, contemporary, and common meaning. *United States v. TRW Rifle 7.62x51mm Caliber, 447 F.3d 686, 689 (9th Cir. 2006)* (third alteration in original) (quoting *United States v. Carter, 421 F.3d 909, 911 (9th Cir. 2005)*). When *§ 365(c)(2) of the Bankruptcy Code* was enacted in 1978, *see An Act to Establish a Uniform Law on the Subject of Bankruptcies, Pub. L. No. 95-598, 92 Stat. 2549 (1978)*, Black's Law Dictionary defined "accommodation" as "[a]n arrangement or engagement made as a favor to another" or "something done to oblige, usually . . . a loan of money or commercial paper," *Accommodation, Black's Law Dictionary* (rev. 4th ed. 1968). Other dictionaries from **[*10]** that period were in accord. *See Accommodation, The Am. Heritage Dictionary of the Eng. Language* (New College ed. 1976) ("A loan or other financial favor."); *Accommodation, Webster's Third New Int'l Dictionary* (1976) ("[S]omething that is supplied for convenience or to satisfy a need."). An agreement to accept as full payment much less than the amount contractually due in recognition of the debtor's financial inability to pay the full amount is assuredly a "financial favor," and one provided "to satisfy a need" of the debtor. Thus, the ordinary and common meaning of "financial accommodations" at the time of enactment included contracts to forebear or reduce payments to which one was otherwise entitled, if those contracts were agreed upon to aid a debtor's poor financial condition.[3]

The Settlement Agreement is plainly such a contract. The Settlement Agreement itself memorialized that Svenhard was liable for tens of millions of dollars that it could not fully repay because of its "limited assets," and that the Pension Fund accordingly **[*11]** agreed to "accept a schedule of payments . . . that Svenhard [was] likely to be able to pay while continuing to operate its business." In other words, the Settlement Agreement involves the forbearance and reduction of the amount to which the Pension Fund would otherwise be entitled, and the Pension Fund agreed to that arrangement expressly because of Svenhard's poor financial condition.[4]

Svenhard argues that the term "financial accommodations" includes only loans or other extensions of money or credit, neither of which are present here. But, again, the ordinary meaning of "accommodation" at the time of *§ 365*'s enactment was "something done to oblige, *usually*"—not exclusively—"a loan of money or commercial paper." *Accommodation, Black's Law Dictionary* (4th ed. 1968) (emphasis added); *see also Accommodation, The Am. Heritage Dictionary of the Eng. Language* (New College ed. 1976) ("A loan or *other financial favor*." (emphasis added)).

Also, "[t]he superfluity canon guides [us] to infer that Congress did not intend to make any portion of a statute superfluous," *In re Pangang Grp. Co., 901 F.3d 1046, 1056 (9th Cir. 2018)*, and it requires us to "give effect to every word of a statute wherever possible," *id.* (quoting *Leocal v. Ashcroft, 543 U.S. 1, 12, 125 S. Ct. 377, 160 L. Ed. 2d 271 (2004)*). Although there may be overlap **[*12]** between what constitutes a "loan," "debt financing," or "financial accommodations" under *§ 365(c)(2)*, that Congress used each of those terms indicates that each should carry distinct meaning. Otherwise, Congress "could have omitted the word[s] ["financial accommodations"] . . . altogether." *Carcieri v. Salazar, 555 U.S. 379, 391, 129 S. Ct. 1058, 172 L. Ed. 2d 791 (2009)*. Our obligation "to give effect, if possible, to every word Congress used" therefore counsels reading "financial accommodations" to include more than only loans or other debt financing. *Id.* (quoting *Reiter v. Sonotone Corp., 442 U.S. 330, 339, 99 S. Ct. 2326, 60 L. Ed. 2d 931 (1979)*).

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[3] The definition of "accommodation" has remained substantially the same. *See, e.g., Accommodation, Black's Law Dictionary* (12th ed. 2024) ("A loan or other financial favor."); *Accommodation, Merriam-Webster's Collegiate Dictionary* (11th ed. 2022) ("[S]omething supplied for convenience or to satisfy a need."); *Accommodation, The Am. Heritage Dictionary of the Eng. Language* (3d ed. 2000) ("A financial favor.").

[4] Svenhard argues that even if one purpose of the Settlement Agreement was to reduce Svenhard's liabilities because of its poor financial condition, another purpose was to "settle[] a pending dispute between the parties over the *amount* of those original liabilities." That purported other purpose does not comport with the Settlement Agreement's terms. On appeal, Svenhard suggests that its pre-settlement withdrawal liability may have been around $23 million—not $39 million as stated in the Settlement Agreement. The terms of the Settlement Agreement provided that Svenhard would pay the Pension Fund only $3 million for its withdrawal liability. That figure is so far below either liability figure—$23 million or $39 million—that it could not have been meant to settle the amount actually due. Rather, the Settlement Agreement's purpose was to accommodate Svenhard's inability to pay its withdrawal liability—whether $23 million or $39 million—by requiring payment only of a much lower amount.

The cases on which Svenhard primarily relies to argue that a contract is a "financial accommodation" only if it involves loans or other debt financing—*In re Easebe Enterprises, Inc., 900 F.2d 1417 (9th Cir. 1990)*, *overruled on other grounds by In re Robert L. Helms Construction & Development Co., 139 F.3d 702 (9th Cir. 1998)* (en banc), and *In re Sun Runner Marine, Inc., 945 F.2d 1089 (9th Cir. 1991)*—do not support that proposition.

In *Easebe*, we held that a contract through which a debtor would receive property in exchange for a promise to pay fell under *§ 365(c)(2)*'s prohibition on assumption and assignment. *900 F.2d at 1420*. In so holding, we explained that *§ 365(c)(2)* "prohibits the assumption of debt financing or *other financial accommodations* as well as loans," and that, like here, "the transaction at issue [did] not require the [counterparties] to lend [the debtor] any funds." *Id.* (emphasis added). We acknowledged that *§ 365(c)(2)* should be "strictly construed **[*13]** so as not to extend to an ordinary contract to provide goods and services that has incidental financial accommodations or extensions of credit," but that recognition does not help Svenhard here. *Id. at 1419* (citation modified). The Settlement Agreement is not a contract for goods and services that has only "incidental" financial accommodations. No goods or services were exchanged as part of the Settlement Agreement; its only apparent purpose was to accommodate Svenhard's financial needs and thereby ensure that the Pension Fund received *some* payment on Svenhard's obligation. Thus, our holding here that the Settlement Agreement falls under *§ 365(c)(2)* is consistent with *Easebe*.

Our decision in *Sun Runner* is also consistent with the result we reach here. In *Sun Runner*, we held that a lender's agreements to offer loans to third parties constituted "financial accommodations" to the debtor because those third-party loans were "an indispensable means of financing the debtor's business." *945 F.2d at 1092*. We observed that "[t]he term 'financial accommodation' has been defined as the extension of money or credit to accommodate another," but we did not conclude that the term was *limited* to loans or other extensions of money or credit. *Id.* Such a conclusion **[*14]** would have required us to stray beyond the particular facts of that case, which involved loans. In any event, agreeing to take less than ten cents on the dollar as payment of an obligation is tantamount to an "extension of money" to the debtor, in the amount that will not have to be paid.

Although our precedents have not defined the entire scope of what may constitute "financial accommodations" under *§ 365(c)(2)*, the plain text of the statute indicates that "financial accommodations" must include more than just loans and other debt financing. Because the Settlement Agreement falls within the ordinary meaning of "financial accommodations," it accordingly cannot be assumed or assigned under *§ 365(c)(2)*.

In light of that conclusion, we need not reach Svenhard's argument that, had the bankruptcy court granted the motion to assume, the bankruptcy court should also have declared that the Settlement Agreement was valid and subsisting.

III.

For the foregoing reasons, we **AFFIRM**.

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