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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 FORD MOTOR COMPANY,
12 Plaintiff,
13 v.
14 TITAN ENTERPRISE INC.,
15 Defendant.
16
17

2:14-cv-07701-RSWL (JCx)
AMENDED AS TO SIGNATURE DATE
ORDER re: Defendant's
Motion to Dismiss [28]

18
19 **INTRODUCTION**

20 Currently before the Court is Defendant Titan
21 Enterprise Inc.'s ("Defendant" or "Titan") Motion to
22 Dismiss [28] ("Motion") pursuant to Federal Rule of
23 Civil Procedure 12(b)(6). Defendant's Motion [28]
24 arises out of Plaintiff Ford Motor Company's
25 ("Plaintiff" or "Ford") Action [1, 23] against Titan
26 for breach of contract.

27 The Court, having reviewed all papers submitted and
28 pertaining to this Motion [28], **NOW FINDS AND RULES AS**

1 **FOLLOWS:** The Court **DENIES** Defendant's Motion to Dismiss
2 [28].

3 **I. BACKGROUND**

4 **A. Factual Background**

5 Plaintiff Ford is incorporated in Delaware with its
6 principal place of business in Michigan. First Amend.
7 Compl. ("FAC") ¶ 1, ECF No. 23. Defendant Titan is
8 incorporated in California with its principal place of
9 business in California. Id. ¶ 2. Plaintiff is seeking
10 \$823,000 in damages. Id. ¶ 31.

11 Ford's Competitive Price Allowance Program ("CPA")
12 is an incentive program that encourages high volume
13 purchases by offering "discounts or credits to
14 qualified high-volume purchasers of Ford vehicles
15 through the Ford Fleet Program." Id. ¶¶ 8-9. Ford and
16 Titan executed a CPA contract on September 18, 2013,
17 for the 2014 Program Year. Id. ¶ 10. In exchange for
18 discounts on Titan's purchases, the CPA contract
19 states: "Titan Enterprise Inc. must acquire 250 units
20 during the course of the program year [i.e., the
21 calendar year]," and "[i]n the event this volume has
22 not been reached, you will be required to reimburse
23 Ford all or a portion of the CPA funds paid." Id. ¶ 14
24 (alteration in original). The CPA contract also
25 contained terms requiring the purchased Ford vehicles
26 to be registered and operated "solely in the United
27 States." Id. ¶ 15.

28 In early 2014, Defendant Titan purchased over

1 seventy Ford Explorers from a licensed Ford dealer in
2 California named Rush Truck Centers of California, Inc.
3 ("Rush"). Id. ¶ 18. Titan received a total of
4 \$322,500 in discounts from Ford as a result of its
5 purchase from Rush. Id. Titan also purchased over one
6 hundred Ford Explorers from AutoNation Ford Littleton,
7 a licensed Ford dealer in Colorado. Id. ¶ 19. As a
8 result of this purchase, Titan received \$500,500 in
9 discounts from Ford. Id.

10 In May of 2014, "Ford personnel verified that
11 dozens of Ford Explorers purchased by Titan pursuant to
12 the CPA Contract were [] found at a port of entry in
13 mainland China." Id. ¶ 20. On June 17, 2014, Jim
14 Chen, president of Titan, allegedly "admitted to Ford
15 that he exported to China some or all of the Ford
16 Explorers Titan purchased pursuant to the CPA
17 Contract." Id. ¶ 23. Titan also failed to purchase
18 250 Ford vehicles within the program year, as required
19 by the CPA contract. Id. ¶ 21.

20 **B. Procedural Background**

21 Plaintiff filed its Complaint [1] on October 3,
22 2014, and timely filed its First Amended Complaint [23]
23 on January 27, 2015. On February 17, 2015, Defendant
24 timely filed the present Motion to Dismiss [28]. On
25 February 27, 2015, Plaintiff Ford timely filed its
26 Opposition [29]. Defendant did not file a Reply before
27 the March 10, 2015, deadline and, to date, has not
28 filed a Reply. The present Motion [28] was set for

1 hearing on March 24, 2015, and taken under submission
2 [30] on March 18, 2015.

3 **II. LEGAL STANDARD**

4 Federal Rule of Civil Procedure 12(b)(6) allows a
5 party to move for dismissal of one or more claims if
6 the pleading fails to state a claim upon which relief
7 can be granted. Fed. R. Civ. P. 12(b)(6). Dismissal
8 can be based on a "lack of a cognizable legal theory or
9 the absence of sufficient facts alleged under a
10 cognizable legal theory." Balistreri v. Pacifica
11 Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). A
12 complaint must "contain sufficient factual matter,
13 accepted as true, to state a claim to relief that is
14 plausible on its face." Ashcroft v. Iqbal, 556 U.S.
15 662, 678 (2009) (internal quotation marks omitted);
16 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)
17 ("While a complaint attacked by a Rule 12(b)(6) motion
18 to dismiss does not need detailed factual allegations,
19 a plaintiff's obligation to provide the 'grounds' of
20 his 'entitle[ment] to relief' requires more than labels
21 and conclusions, and a formulaic recitation of a cause
22 of action's elements will not do." (internal citations
23 omitted)).

24 In a Rule 12(b)(6) motion to dismiss, a court must
25 presume all factual allegations of the complaint to be
26 true and draw all reasonable inferences in favor of the
27 non-moving party. Klarfeld v. United States, 944 F.2d
28 583, 585 (9th Cir. 1991). The question presented by a

1 motion to dismiss is not whether the plaintiff will
2 ultimately prevail, but whether the plaintiff has
3 alleged sufficient factual grounds to support a
4 plausible claim to relief such that plaintiff is
5 entitled to offer evidence in support of its claim.
6 Iqbal, 556 U.S. at 678; Swierkiewicz v. Sorema N.A.,
7 534 U.S. 506, 511 (2002).

8 **III. ANALYSIS**

9 **A. Breach of Contract Claim**

10 The four elements of a breach of contract claim
11 under California law are: "(1) the contract, (2) the
12 plaintiff's performance of the contract or excuse for
13 nonperformance, (3) the defendant's breach, and (4) the
14 resulting damage to the plaintiff." Richman v.
15 Hartley, 169 Cal. Rptr. 3d 475, 478 (Ct. App. 2014)
16 (citing Careau & Co. v. Sec. Pac. Bus. Credit, Inc.,
17 272 Cal. Rptr. 387, 395 (Ct. App. 1990)).

18 **1. The Contract**

19 Here, Defendant does not dispute the existence of
20 the CPA Contract, and Plaintiff alleges sufficient
21 facts showing the existence of a contract between Ford
22 and Titan. Opp'n 6:16-7:8; FAC ¶¶ 10-19; see Cal. Civ.
23 Code § 1550.

24 **2. Plaintiff's Performance or Excuse**

25 Once a valid contract exists, both parties are
26 required to perform according to the terms of the
27 agreement. Palmquist v. Palmquist, 27 Cal. Rptr. 744,
28 753 (Ct. App. 1963). Here, Defendant Titan does not

1 dispute that Ford performed according to the terms of
2 the CPA Contract, and Ford has sufficiently alleged its
3 performance. See FAC ¶¶ 13-14, 18-19.

4 3. Breach

5 Non-performance of the contract terms constitutes a
6 breach of contract. Zee Med. Distrib. Ass'n, Inc. v.
7 Zee Med., Inc., 94 Cal. Rptr. 2d 829, 836 (Ct. App.
8 2000). Here, Plaintiff alleges that Defendant Titan
9 had a duty under the CPA Contract to purchase at least
10 250 Ford vehicles during the course of the program
11 year, and to register and operate the purchased Ford
12 vehicles solely in the United States. FAC ¶¶ 14-15.
13 Ford alleges that Titan failed to perform both duties
14 by Titan's failure to purchase the required 250 Ford
15 vehicles and to register and operate the purchased Ford
16 vehicles solely in the United States. FAC ¶¶ 20-23.
17 As such, Plaintiff has sufficiently alleged that Titan
18 breached the CPA Contract.

19 4. Damages

20 The final element of a breach of contract claim
21 requires that Plaintiff show damages. Emerald Bay
22 Cnty. Assn. v. Golden Eagle Ins. Corp., 31 Cal. Rptr.
23 3d 43, 52 (Ct. App. 2005). Here, Plaintiff alleges it
24 was damaged in the amount of \$823,000 because Titan
25 refused to return the \$823,000 in discounts, to which
26 Titan is allegedly no longer entitled as a result of
27 Titan's breach of the CPA Contract. FAC ¶ 24.

1 In light of the above analysis, Plaintiff has
2 sufficiently alleged a breach of contract claim upon
3 which Plaintiff may recover.

4 **B. Defendant's Affirmative Defenses**¹

5 "[T]he assertion of an affirmative defense may be
6 considered properly on a motion to dismiss where the
7 'allegations in the complaint suffice to establish' the
8 defense." Sams v. Yahoo! Inc., 713 F.3d 1175, 1179
9 (9th Cir. 2013) (citing Jones v. Bock, 549 U.S. 199,
10 215 (2007)); see also Asarco, LLC v. Union Pac. R.R.
11 Co., 765 F.3d 999, 1004 (9th Cir. 2014) ("Dismissal
12 under Rule 12(b)(6) on the basis of an affirmative
13 defense is proper only if the defendant shows some
14 obvious bar to securing relief on the face of the
15 complaint."). But a dismissal under Rule 12(b)(6) is
16 improper if the asserted affirmative defense raises
17 disputed issues of fact. Asarco, 765 F.3d at 1004
18 (citing Scott v. Kuhlmann, 746 F.2d 1377, 1378 (9th
19 Cir. 1984)).

20 1. Meaning of Contract Term Requiring Purchased
21 Vehicles to be Registered and Operated Within
22 the United States

23 Defendant argues that the "term that the 'Vehicles
24 must be registered and operated solely in the United
25

26 ¹ An affirmative defense "plead[s] matters extraneous to the
27 plaintiff's prima facie case, which deny plaintiff's right to
28 recover, even if the allegations of the complaint are true." G &
G Closed Circuit Events, LLC v. Nguyen, No. 10-CV-00168-LHK, 2010
WL 3749284, at *12 (N.D. Cal. Sept. 23, 2010) (internal quotation
marks omitted).

1 States,' does not preclude TITAN for [sic] exporting
2 the vehicles for sale." Mot. 11:6-9. Defendant is
3 essentially disputing the meaning of a term of the CPA
4 Contract. The Court need not consider Defendant's
5 argument, however, because even if Defendant's
6 interpretation of the CPA Contract is correct,
7 Plaintiff could still recover under its breach of
8 contract claim on the basis of Defendant's alleged
9 failure to purchase the requisite 250 vehicles within
10 the program year.

11 Because Defendant's affirmative defense fails to
12 preclude Plaintiff's recovery for its breach of
13 contract claim, this affirmative defense fails to
14 justify dismissal pursuant to Fed. R. Civ. P. 12(b)(6).

15 2. Enforceability of Contract Due to Alleged
16 Restraint on Trade

17 Defendant argues that the "export prohibition" in
18 the CPA Contract is unenforceable because it is an
19 "undue restraint of trade" on Titan, preventing Titan
20 "from disposing of lawfully acquired vehicles." Mot.
21 9:24-10:1. If Defendant is correct in arguing that the
22 export clause is an undue restraint of trade, the Court
23 would sever the clause from the rest of the CPA
24 Contract. See Adair, 77 Cal. Rptr. 3d at 73-74 ("It is
25 settled that where a contract has both void and valid
26 provisions, a court may sever the void provision and
27 enforce the remainder of the contract.").

28 Thus, even if the export clause is severed from the

1 CPA Contract, the rest of the CPA Contract would be
2 enforceable, and Defendant Titan could still be liable
3 for breach of contract for failing to purchase the
4 required 250 Ford vehicles within the program year.
5 Because Plaintiff is not precluded from recovery by
6 this affirmative defense, this affirmative defense also
7 fails to justify dismissal under Fed. R. Civ. P.
8 12(b)(6).

9 Because Defendant has not shown that Plaintiff's
10 First Amended Complaint [23] fails to state a claim
11 upon which relief can be granted, see Fed. R. Civ. P.
12 12(b)(6), Defendant's Motion [28] must be **DENIED**.

13 **VI. CONCLUSION**

14 For the foregoing reasons, Defendant Titan's Motion
15 to Dismiss [28] is **HEREBY DENIED**.

16
17 **IT IS SO ORDERED.**

18
19 DATED: April 13, 2015

RONALD S.W. LEW

HONORABLE RONALD S.W. LEW
Senior U.S. District Judge