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UNITED STATES DISTRICT COURT
Northern District of California

MELANIE O'REILLY,

Plaintiff(s),

No. C 09-03580 MEJ

v.

VALLEY ENTERTAINMENT INC.,

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS (DKT #16)**

Defendant(s).

Pending before the Court is Defendants' Motion to Dismiss. (Dkt. #16.) Pursuant to Civil Local Rule 7-1(b), the Court finds this matter suitable for disposition without a hearing and hereby VACATES the February 4, 2010 hearing. Good cause appearing, the Court hereby GRANTS Defendants' motion and DISMISSES Plaintiff's complaint WITH LEAVE TO AMEND as follows:

- 1) Plaintiff's First and Second Causes of Action shall be amended to include the existence of an actual copyright. Any copyright(s) must be attached as an exhibit to the amended complaint.
- 2) Because the dispute regarding Plaintiff's breach of contract claim is a factual issue, the Court finds dismissal without leave to amend inappropriate. However, Plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, --- U.S. ----, ----, 129 S.Ct. 1937, 1949 (2009) (citation omitted). Thus, threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* In amending her complaint, Plaintiff should be mindful of this standard and plead her breach of contract claim with well-pleaded factual allegations that allow the Court to draw the reasonable inference that Defendants are liable.

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3) As to Plaintiff's fraud claim, she must comply with the requirements of Federal Rule of Civil Procedure 9(b). Specifically, Plaintiff must plead the circumstances constituting fraud with particularity. Fed. R. Civ. P. 9(b). These circumstances include the "time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir.2007) (quoting *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir.2004)). Plaintiff shall amend her Fourth Cause of Action accordingly.

Plaintiff shall file her amended complaint by February 4, 2010, and Defendant shall file an answer or other response by February 25, 2010.

IT IS SO ORDERED.

Dated: January 21, 2010



Maria-Elena James
Chief United States Magistrate Judge