UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MORGAN TIRE OF SACRAMENTO, INC., PLAINTIFF, v. THE GOODYEAR TIRE & RUBBER COMPANY, ET AL., DEFENDANTS.	)	CASE NO. 5:15-CV-2134 JUDGE SARA LIOI

MEMORANDUM IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS AMENDED COMPLAINT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE**

STATEMENT OF ISSUES

1. Whether Ohio law applies to Plaintiff Morgan Tire of Sacramento's claims, when the claims arise out of admittedly valid and enforceable dealer contracts with Goodyear that contain undisputed Ohio choice-of-law provisions, there is no reason to disregard the contracting parties' choice of law, and Ohio choice-of-law principles strongly favor upholding the chosen law of contracting parties?

2. Whether a breach of contract claim is stated under Ohio law when the actions by Goodyear alleged to constitute the claimed breach (i.e., termination of its dealer contracts with Morgan Tire) are expressly permitted by the clear, unambiguous, and undisputed terms of those admittedly valid and enforceable dealer contracts? And, whether duties not included within the terms of those dealer contracts (i.e., the repurchase of inventory after termination of the dealer contracts) may be imposed upon Goodyear, based on its claimed "customary practice," when those contracts govern its relationship with Morgan Tire and contain no such obligations, but do contain clear, unambiguous, and undisputed integration clauses, and provide that the parties considered the possibility of losses resulting from the termination of the contracts and agreed not to hold one another liable for those losses?

3. Whether a breach of contract claim may stated under Ohio law when Morgan Tire did not allege that Goodyear actually took the actions claimed to constitute the breach (i.e., preventing Morgan Tire from selling off inventory after Goodyear terminated its relationship with Morgan Tire)? And, whether duties not included in the terms of Morgan Tire's dealer contracts with Goodyear (i.e., the repurchase of inventory after termination of the dealer contracts) may be imposed upon Goodyear, based on allegedly "established industry custom," when the admittedly valid and enforceable dealer contracts governing Morgan Tire's and Goodyear's relationship contain no such obligations, but do contain clear, unambiguous, and

undisputed integration clauses, and provide that the parties considered the possibility of losses resulting from the termination of the contracts and agreed not to hold one another liable for those losses?

4. Whether a promissory estoppel claim under Ohio law should be dismissed when the promises Morgan Tire seeks to enforce are governed by the clear, unambiguous, and undisputed terms of its admittedly valid and enforceable dealer contracts with Goodyear?

5. Whether Morgan Tire can state a claim under Ohio law for tortious interference with Morgan Tire's contracts with third parties based on Goodyear's termination of its relationship with Morgan Tire, when the clear, unambiguous, and undisputed terms of Goodyear's admittedly valid and enforceable dealer contracts with Morgan Tire entitled Goodyear to do so, with or without cause; there is no allegations that Goodyear induced any third party to breach its contract with Morgan Tire; Morgan Tire's contracts with the third parties were terminable at will; and Morgan Tire fails to allege any other conduct that plausibly could have precipitated the termination of the third party contracts in light of Goodyear's termination of its valid and enforceable dealer contracts pursuant to the clear, unambiguous, and undisputed terms of those contracts?

6. Whether Morgan Tire can state a claim under Ohio law for tortious interference with its prospective business advantage when Morgan Tire fails to allege any conduct that plausibly could have precipitated the termination of the claimed business relationships in light of Goodyear's termination of its valid and enforceable dealer contracts pursuant to the clear, unambiguous, and undisputed terms of those contracts, and when the claimed business relationships with which Goodyear allegedly interfered, in any event, are speculative (e.g., subject to termination without cause)?

7. Whether a claim for breach of the covenant of good faith and fair dealing under Ohio law should be dismissed when it is asserted as a stand-alone claim and when the alleged promises sought to be enforced by Morgan Tire are governed by the clear, unambiguous, and undisputed terms of its admittedly valid and enforceable dealer contracts with Goodyear?

8. Whether a claim under California's Unfair Competition Law (UCL) should be dismissed when it arises from the admittedly valid and enforceable dealer contracts that contain clear, unambiguous, and undisputed choice of law provisions designating Ohio law for the resolution of disputes, and courts in the Ninth Circuit and elsewhere consistently hold that choice of law provisions selecting another state's law render UCL claims unavailable; and Morgan Tire otherwise fails to allege how the challenged conduct harmed or threatened to harm competition as the UCL, according to the California Supreme Court, requires?

SUMMARY OF ARGUMENT

The core of all of Plaintiff Morgan Tire of Sacramento's claims in this more-than-two-year-old dealer termination lawsuit is the decision by Defendant, The Goodyear Tire & Rubber Company, to terminate its dealer contracts with Morgan Tire in January 2013. Under the express terms of those contracts, however, Goodyear had the lawful right to terminate its distributor relationship with Morgan Tire, with or without cause—and it did so. This lawsuit, and all of Morgan Tire's claims, ultimately should be dismissed for that fundamental reason.

More specifically, Morgan Tire's claims should be dismissed because:

1. In transferring the case to this Court, Judge Mueller held that all of Morgan Tire's claims—for breach of contract (Claims 1 and 2), promissory estoppel (Claim 3), tortious interference (Claims 4 and 5), breach of the covenant of good faith and fair dealing (Claim 6) and unfair competition (Claim 7)—arise out of its dealer contracts with Goodyear.

2. Morgan Tire's amended complaint expressly alleges that those dealer contracts were valid and enforceable, and that none of the terms of the agreements is in dispute.

3. Those allegations effectively concede (a) that the dealer contracts (based on their valid and enforceable integration clauses) completely defined the scope and terms of Morgan Tire's distributor relationship with Goodyear; (b) that Goodyear had the indisputable (and undisputed) right to terminate the relationship based on the termination clauses in the contracts; and (c) that the terms in the dealer contracts stating that Morgan Tire and Goodyear contemplated termination might cause them to lose investments made to support their relationship, and that they expressly agreed not to hold one another liable for any such losses, bars any claims for damages based on such losses.

4. Consequently, (a) Morgan Tire's claims for breach of contact (Claims 1 and 2) fail (among other reasons) because Goodyear did not breach any contract by exercising its lawful rights to terminate its relationship with Morgan Tire; (b) Morgan Tire's claims for promissory estoppel and breach of the covenant of good faith and fair dealing (Claims 3 and 6) fail (among other reasons) because those gap-filling doctrines cannot be used (as Morgan Tire attempts to do) to create a claim regarding matters covered by the admittedly valid and enforceable dealer contracts; (c) Morgan Tire's claims for tortious interference (claims 4 and 5) fail (among other reasons) because Goodyear cannot be held liable in tort for lawfully exercising its valid and enforceable right to terminate the dealer contract; and (d) Morgan Tire's purported unfair competition claim under California law is not available as a result of the choice of law clauses in the dealer contracts, and fails in any event because Morgan Tire does not allege how Goodyear's or its affiliate and codefendant Wingfoot's conduct harmed or threatened to harm competition.

I. INTRODUCTION

Plaintiff Morgan Tire of Sacramento's amended complaint (ECF 54), its fourth since initiating this litigation more than two years ago, continues to challenge the decision by Defendant The Goodyear Tire & Rubber Co. to terminate its dealer contracts with Morgan Tire in January 2013. That decision is at the core of all of Morgan Tire's claims. Yet, Morgan Tire continues to ignore the critical fact that, under the express terms of those contracts, Goodyear had the lawful right to terminate its relationship with Morgan Tire, with or without cause—and it did. This lawsuit, and all of Morgan Tire's claims, should be dismissed for that simple reason.

That this lawsuit remains at this stage is a testament to Morgan Tire's efforts to evade the plain terms of its dealer contracts with Goodyear, to no avail. In transferring the case to this Court, Judge Mueller—who heard the case in California, where it was filed, transferred, re-filed, and then transferred again—rejected Morgan Tire's repeated attempts to plead around the forum selection clause in the contracts. She ruled, twice, that the forum selection clause in the contracts mandated transfer of Morgan Tire's complaint because "[a]ll of [Morgan Tire's] claims arise out of the contractual relation in this case. Not just the new tire claims, or the unfair competition claims, or the tortious interference claims. All of the claims." ECF 25, at 8 (citation omitted).

Now it is time to apply the rest of the contract terms—including the termination provisions—to Morgan Tire's claims on the merits. The amended complaint pleads two critical facts that make this easier: (1) It pleads that the contracts claimed to define Morgan Tire's relationship with Goodyear—two contracts for the distribution of new tires and retreads (the "New Tire Agreement" and the "Retread Agreement") and a claimed subcontract under which Goodyear allegedly agreed to supply Morgan Tire with new tires and retreads to fulfill its contracts with three California municipalities (the "County Subcontract")—"at all relevant times" were "valid and enforceable contracts." ECF 54, ¶¶ 49, 59. And (2) it pleads that none of

the terms of these agreements, including the termination provisions, are "at issue" in the case. *Id.* ¶ 13. These facts are critically important because they effectively concede (1) that these three agreements defined completely the scope and terms of Morgan Tire's distributor relationship with Goodyear; (2) that Goodyear had the indisputable (and undisputed) right under those agreements to terminate the relationship; and (3) that Morgan Tire and Goodyear contemplated that termination of their relationship might cause them to incur losses, and that they expressly agreed nonetheless not to hold one another liable for any such losses. None of Morgan Tire's claims, as explained fully below, can survive these concessions.

Now, after two years of evasion, Goodyear and Wingfoot Commercial Tire Systems, LLC, a Goodyear subsidiary and the other named defendant, ask the Court to accept Morgan Tire's concessions and to dismiss all of Morgan Tire's claims, with prejudice, once and for all.

II. BACKGROUND

Goodyear manufactures and sells new tires for cars and trucks, as well as retread material to replace worn truck tire tread, in competition with other manufacturers, like Continental. Goodyear distributes its tire and retread products through affiliates, like Wingfoot. *Id.* ¶ 3. It also contracts with a network of independent distributors (dealers and retreaders) that service Goodyear's national accounts (e.g., UPS) and other tire and retread customers (e.g., the County of Sacramento). *Id.* ¶¶ 17-18; ECF 54-1, at 2; ECF 54-2, at 2.

Goodyear manages its distributor network using contracts. Under those contracts, Goodyear's authorized tire dealers distribute Goodyear-branded tires. ECF 54-1, §§ 2, 18. Its authorized retreaders buy retreading materials and equipment from Goodyear and use them, with Goodyear's patented tread designs and molds, to produce retreads that meet Goodyear's quality standards. ECF 54-2, at 2-3. All Goodyear distributors must agree to "aggressively . . . promote" Goodyear's products—and not to "substitute" competitors' products when customers request

Goodyear's products. ECF 54-1, § 5; ECF 54-2, §2. No distributor has an exclusive right to any customer or territory; Goodyear "retains the right" to sell its products to any customer or distributor anywhere. ECF 54-1, § 2; ECF 54-2, § 1.

Morgan Tire has been a tire and retread distributor for Goodyear and other tire manufacturers in California since at least 1971. ECF 54, ¶¶ 10, 22. It became an authorized distributor of Goodyear tires and retread services in 1993 and 2001, respectively. *Id.* ¶¶ 9, 16. During this entire time, Morgan Tire's relationship with Goodyear as a tire dealer and retreader was governed by the terms of Goodyear authorized dealer and retreader agreements substantially the same as Exhibits A and B to the amended complaint. *Id.* ¶¶ 9-17; ECF 54-1; ECF 54-2.

On January 17, 2013, Goodyear notified Morgan Tire of its intent to terminate the relationship, which ended thereafter. *Id.* ¶ 37. Unhappy with this decision, Morgan Tire sued Goodyear and Wingfoot in October 2013, alleging, among other things, that the termination breached its New Tire and Retread Agreements with Goodyear, as well as the purported "County Subcontract" by which Goodyear allegedly agreed to supply tire and retread material to support a contract between Morgan Tire and the County of Sacramento and piggy-back agreements with the Cities of Sacramento and Roseville (the "County Contracts" and the "Local Governments"). This "County Subcontract" expressly incorporated the terms of Goodyear's Retread Agreement, including its termination provisions. ECF 54, ¶¶ 26-27; *see also* ECF 54-3.

The amended complaint (ECF 54) is Morgan Tire's fourth attempt to plead a plausible, properly venued case. Morgan Tire filed its first complaint against Goodyear and Wingfoot in the Central District of California in October 2013.[1] Morgan Tire initially claimed the New Tire and Retread Agreements governed its relationship with Goodyear. But when defendants moved to transfer the case to this Court pursuant to the forum selection clause in those agreements,

[1] The original case was captioned *Morgan Tire of Sacramento, Inc. v. The Goodyear Tire & Rubber Co. and Wingfoot Commercial Tires Sys., LLC*, No. 2:13-cv-02135 (E.D. Cal.) (filed Oct. 15, 2013) ("*Morgan Tire I*").

Morgan Tire filed an amended complaint. It alleged that Morgan Tire's relationship with Goodyear was not governed by the agreements after all, but instead by a "partly written and partly oral agreement . . . acknowledged by [a] well-established course of business dealings," which naturally did *not* include the forum selection clause. *Morgan Tire I* ECF 16, ¶¶ 9-11, 13. Judge Mueller rejected this tactic, ruling that "[a]ll of [Morgan Tire's] claims arise out of the contractual relation in this case," and transferred the case to this Court. *Morgan Tire I* ECF 39, at 14. Three weeks later, Morgan Tire voluntarily dismissed its complaint. *Morgan Tire I* ECF 47.

Undeterred, on January 16, 2015, Morgan Tire filed a new (third) complaint, again in California, initiating the present action. That complaint told "an abridged version of the same story set out in the previous complaint," ECF 25, at 5; it "include[d] the same factual allegations as [the] 2013 complaint, with the transparent exclusion of only the new tire agreement and its forum selection clause," *id.* at 8. Upon defendants' motion to transfer, Judge Mueller ruled:

> Morgan Tire may not avoid the forum selection clause here by simply deleting express reference to it and seeking damages for breach only of part of the contractual relationship asserted previously. The court previously has held "[a]ll of plaintiff's claims arise out of the contractual relation in this case." Not just the new tire claims, or the unfair competition claims, or the tortious interference claims. All of the claims.

ECF 25 at 8 (citation omitted). Judge Mueller again transferred the case to this Court.

Now, in its current complaint, Morgan Tire once again admits—as Judge Mueller held and defendants argued—that the agreements did govern its business relationship with Goodyear. ECF 54, ¶ 9 (new tire relationship "governed by a series of express, written dealer agreements (each, a 'New Tire Agreement'), beginning in 1993 and renewed from time to time thereafter"); *id.* ¶¶ 16-17 (retread relationship governed by Retread Agreement); *id.* ¶¶ 26-27 (as part of County Subcontract Morgan Tire agreed to "continue to abide by the terms of Goodyear's standard form of retread agreement"); *id.* ¶ 49 (County Subcontract "at all relevant times valid

and enforceable"); *id.* ¶ 59 ("At all relevant times the Retread Agreement and the New Tire Agreement were valid and enforceable contracts.").

The problem for Morgan Tire is that the terms of the agreements require all of its claims to be dismissed. The following provisions, as explained below, are dispositive and, as Morgan Tire admits, their validity is "not at issue here." *Id.* ¶ 13; *see also id.* ¶¶ 49, 59.

First, the New Tire and Retread Agreements contain comprehensive integration clauses that make them effectively the final word on Morgan Tire's and Goodyear's relationship:

> [T]his Agreement constitutes all understandings of the parties and was entered into without reliance on any oral or written representations or promises previously or currently made by either party and shall supersede any other Dealer Agreement and/or any other agreement now in effect between the parties concerning the sale by Goodyear to Dealer of any Products and merchandise covered by this Agreement, and no other obligations or promises by either party are to be inferred by reference to any oral or written statements by the parties or their representatives.

ECF 54-1, § 30. The Retread Agreement adds that, in the event of a "contradict[ion]" between the Retread Agreement and New Tire Agreement, the latter "shall prevail," ECF 54-2 & 54-3, § 20, thus incorporating the terms of the New Tire Agreement into the Retread Agreement.

Second, the New Tire and Retread Agreements also provide that they "may be terminated at any time by either party, with or without cause, upon at least thirty (30) days prior written notice to the other party." ECF 54-1, § 26(b); ECF 54-2, § 17 (omitting "at least"). The Retread Agreement further provides, "[T]he right of termination as so provided is absolute." *Id.*

Third, the New Tire and Retread Agreements contain identical provisions releasing the parties from liability to each other for any losses resulting from their:

> The parties have considered in advance the possibility or necessity of expenditures to be incurred in preparing for performance of this Agreement and the possible loss of or reduction in the benefit thereof in the event of expiration or termination and have nevertheless mutually agreed that neither party shall be liable to the other for damages in any form by reason of the expiration or termination of this Agreement pursuant to its terms.

ECF 54-1 (New Tire Agreement) § 26(f); ECF 54-2 (Retread Agreement) § 17 (same).

Finally, Morgan Tire specifically alleges (and so also admits) that the claimed County Subcontract incorporates the terms of the Retread Agreement, including all of the terms outlined immediately above. ECF 54, ¶ 26-27; ECF 54-3.

III. ARGUMENT

To survive a motion to dismiss, Morgan Tire must allege facts sufficient "to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Baumgardner v. Bimbo Food Bakeries Distrib., Inc.*, 697 F. Supp. 2d 801, 807 (N.D. Ohio 2010) (Lioi, J.). It can no more rely on "labels and conclusions" or "a formulaic recitation of the elements of a cause of action," *Twombly*, 550 U.S. at 555; *D'Ambrosio v. Marino*, 747 F.3d 378, 388 (6th Cir. 2014), than it can "the bare assertion of legal conclusions" or "unwarranted factual inferences." *Gritton v. Disponett*, 332 F. App'x 232, 236 (6th Cir. 2009). Instead, Morgan Tire's complaint must provide enough factual "heft" to *plausibly* "'sho[w] that [it] is entitled to relief.'" *Twombly*, 550 U.S. at 557 (citation omitted); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).[2]

Here, the facts Morgan Tire alleges confirm not only that it has failed to plead any plausible claims, but also that after four tries, it has no realistic prospect of doing so. All the claims in the amended complaint should be dismissed, with prejudice, for the following reasons:

A. As a Threshold Matter, Ohio Law Governs All of Morgan Tire's Claims

"Ohio choice-of-law principles strongly favor upholding the chosen law of the contracting parties." *Tele-Save Merch. Co. v. Consumers Distrib. Co.*, 814 F.2d 1120, 1122 (6th Cir. 1987). The plain language of Morgan Tire's distribution agreements with Goodyear makes clear, as a matter of law, that the parties chose Ohio law to govern both the construction of the

[2] This "context-specific task . . . requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. The Supreme Court has directed courts to apply these standards rigorously to avoid "sending the parties into discovery when there is no reasonable likelihood that the plaintiff[] can construct a claim from the events related in the complaint." *Id.* at 557-58. That admonition is particularly apt here.

agreements and any disputes arising out of them. *Baumgardner*, 697 F. Supp. 2d at 804-06 (determining choice of law provision on motion to dismiss). The New Tire Agreement states: "[t]he terms and provisions of this Agreement shall be construed under and governed by the laws of the State of Ohio without giving effect to the principles of conflict of laws thereof." ECF 54-1, § 30. This choice, as explained above, is incorporated into the Retread Agreement, ECF 54-2, § 20, as well as the County Subcontract, ECF 54, ¶ 26; ECF 54-3, § 20.

This Court and the Sixth Circuit have read nearly identical provisions to prescribe the applicable law to both contract and related tort claims arising from a contract. *Banek Inc. v. Yogurt Ventures U.S.A., Inc.*, 6 F.3d 357, 363 (6th Cir. 1993); *Moses v. Bus. Card Express, Inc.*, 929 F.2d 1131, 1139-40 (6th Cir. 1991); *Baumgardner*, 697 F. Supp. 2d at 806. There is no reason to depart from that rule here, nor may the Court do so given Judge Mueller's ruling that "[a]ll of [Morgan Tire's] claims arise out of the contractual relation in this case," ECF 25, at 8, which is law of the case. *Lac Vieux Desert Band v. Mich. Gaming Control Bd.*, 276 F.3d 876, 879 (6th Cir. 2002) ("law of the case requires [a Court] to honor the prior rulings" in a case).

Nor is there any reason to disregard the parties' choice. Morgan Tire has admitted the agreements "at all relevant times" were "valid and enforceable," ECF 54, ¶¶ 49, 59, and that none of the terms pertinent to this dispute is "at issue," *id.* ¶ 13. Further, both Goodyear and the dispute have substantial connections to Ohio, *id.* ¶¶ 2-3; application of Ohio law poses no conflict with a fundamental policy of California; and California has no greater material interest than Ohio in the dispute. *Schulke Radio Prods., Ltd. v. Midwestern Broad. Co.*, 453 N.E.2d 683, 684 (Ohio 1983); *Century Bus. Servs. v. Barton*, 967 N.E.2d 782, 793 n.6 (Ohio Ct. App. 2011).

And so, the Court must uphold the parties' choice and apply Ohio law to all the claims.

B. Morgan Tire's First Claim for Breach of the County Subcontract Must Be Dismissed Because It Fails to Plead a Breach of That Claimed Agreement.

To plead a breach of contract, Morgan Tire must allege enough facts to plausibly suggest that Goodyear "failed to fulfill its contractual obligations without legal excuse." *Textron Fin. Corp. v. Nationwide Mut. Ins. Co.*, 684 N.E.2d 1261, 1266 (Ohio Ct. App. 1996) (citation omitted). Yet to support this claim, Morgan Tire makes only the conclusory assertion that Goodyear breached the County Subcontract by "refusing to supply . . . the . . . requirements" for Morgan Tire to continue to fulfill the County Contract. ECF 54, ¶ 51. That claimed "refusal" is no breach at all; it is a euphemism for Goodyear's termination of the County Subcontract pursuant to the terms of the Retread Agreement, ECF 54-3, §§ 16-17, which Morgan Tire concedes it agreed to incorporate into the County Subcontract, ECF 54, ¶ 26, and which was "at all relevant times valid and enforceable," *id.* ¶ 49. Goodyear cannot be held liable for breaching a duty it had the lawful right to terminate.

Nor can Morgan Tire fill this gap in its claim by asserting that Goodyear had a duty, divorced from its written agreements, to supply these materials. *Id.* ¶ 52. That groundless assertion ignores the integration clause incorporated into the County Subcontract through the Retread Agreement, ECF 54-3, § 20, which again Morgan Tire concedes is part of the "valid and enforceable" County Subcontract, ECF 54, ¶ 26, 59. "The purpose of an integration clause is to preclude reliance upon promises of future performance that have not been included in the contract." *Taylor v. Door to Door Transp. Servs., Inc.*, 691 F. Supp. 27, 35 (S.D. Ohio 1988). Morgan Tire cannot now unilaterally expand Goodyear's obligations.

For this same reason Morgan Tire also cannot save its claim by asserting that Goodyear breached a claimed "practice of . . . repurchas[ing] excess material from terminated suppliers [*sic*: dealers]." ECF 54, ¶ 57. None of its written agreements required Goodyear to repurchase excess

material after termination. To the contrary, they state specifically that the parties "considered" the potential for lost investments following termination of their agreements and agreed not to hold one another liable for any such losses. ECF 54-1, § 26(f); ECF 54-3, § 17. And, again, the integration clauses in the agreements bar the imposition of any "other obligations or promises by either party . . . by reference to any oral or written statements by the parties or their representatives." ECF 54-1, § 30; ECF 54-3, § 20. As a result of those "clear and unambiguous terms," Morgan Tire cannot now rely on any claimed "usual and customary practice[]" to create a claim for breach. *Kashif v. Cent. State Univ.*, 729 N.E.2d 787, 791 (Ohio Ct. App. 1999) (rejecting contention that trial court should have considered "usual and customary practices" where "terms of [the] contract [were] clear and unambiguous").

C. Morgan Tire's Second Claim for Breach of the New Tire and Retread Agreements Must Be Dismissed Because It Fails to Plead a Breach of Those Claimed Agreements.

Morgan Tire asserts that Goodyear breached the New Tire and Retread Agreements *not* by terminating them, but after terminating them, "by preventing [Morgan Tire] from selling its remaining inventory" and "by refusing to repurchase . . . excess inventory," ECF 54, ¶ 62, as "required" under "established industry custom," *id.* ¶ 61. Here too, Morgan Tire alleges no facts to plausibly "sho[w] that [it] is entitled to relief." *Twombly*, 550 U.S. at 557 (citation omitted).

Morgan Tire nowhere identifies a single action by Goodyear that prevented it from selling its inventory. Morgan Tire asserts that Goodyear prematurely cut off Morgan Tire's access to its online ordering system, ECF 54, ¶ 37, but it does not allege how that plausibly could have impeded its ability to dispose of inventory already in stock.[3] Nor may Morgan Tire obtain relief for Goodyear's alleged refusal to repurchase "excess inventory" based on purported

[3] Should the Court conclude Morgan Tire's second claim should not be dismissed in its entirety, the claim should be limited to any damage Morgan Tire can prove it suffered between January 28 and February 16, 2013. Ohio law limits damages for breach of a terminable-at-will contract to those incurred between the actual and permitted termination dates. *See Stoebermann v. Beacon Journal Publ'g Co.*, 894 N.E.2d 750, 756 (Ohio Ct. App. 2008); *Kennington v. Emergency Mgmt. Servs.*, No. 95-CA-53, 1996 WL 27834, at *4 (Ohio Ct. App. 1996).

industry practice. As explained, the plain language of the agreements bars such claims. *See* § III.B, *supra*. Morgan Tire's second claim must be dismissed, too.

D. Morgan Tire's Third Claim for Promissory Estoppel Must Be Dismissed Because It Is Barred by the Terms of "Valid and Enforceable" Written Agreements.

Morgan Tire's third claim recasts its first claim for breach of the County Subcontract in the vernacular of promissory estoppel: "[I]n reliance on the prices submitted by Goodyear . . . and the promises made by Goodyear" to supply all the tires needed, Morgan Tire bid on the County Contract, "made the requested capital investments at its plant *and agreed to the written terms of Goodyear's authorized retreader agreement*." ECF 54, ¶ 68 (emphasis added). But this rephrasing does not change the fact that each of these claimed commitments by Goodyear is covered by the terms of the alleged County Subcontract. *See* § III.B, *supra*. Indeed, Morgan Tire defines this very quid pro quo as the "County Subcontract." ECF 54, ¶¶ 26-29.

It is black-letter law that promissory estoppel is not available as a cause of action when, as here, a clear and unambiguous contract governs the matter in dispute. *O.E. Meyer Co. v. BOC Group, Inc.*, No. E-99-002, 2000 WL 234549, at *5 (Ohio Ct. App. Ohio 2000) (collecting cases). Morgan Tire has admitted the County Subcontract's existence, terms, and validity. ECF 54, ¶¶ 26, 49. Having "admitted to the contractual relationship[]," Morgan Tire "cannot bring . . . [a] promissory estoppel claim[]." *Kreamer Sports, Inc. v. Rocky Brands, Inc.*, No. 2:06-cv-576, 2008 WL 4210539, at *13 (S.D. Ohio 2008).

The same analysis bars Morgan Tire's claim that it relied on Goodyear's "express and implied promises" of long-term business relations and profits to "purchase additional equipment and real property." ECF 54, ¶ 69.[4] As explained above, Morgan Tire expressly acknowledged the

[4] Even if a promissory estoppel claim is not barred, such reliance scarcely would have been reasonable, as the doctrine requires. *Mers v. Dispatch Printing Co.*, 483 N.E.2d 150, 154 (Ohio 1985). Morgan Tire alleges it purchased a new retread machine directly from the manufacture in late 2012 because Goodyear "refused" to sell it to Morgan Tire due to ongoing disagreement over the future of their retread relationship. ECF 54, ¶ 36.

possible loss of such investments in the event of termination, and agreed not to hold Goodyear liable for them. *See* § III.B, *supra*. Morgan Tire cannot evade these plain and unambiguous terms now. *O.E. Meyer*, 2000 WL 234549, at *5; *Kreamer Sports*, 2008 WL 4210539, at *13.

E. Morgan Tire's Fourth Claim for Intentional Interference with Contract Must Be Dismissed Because Morgan Tire Fails to Plead Essential Elements of the Claim.

Morgan Tire's fourth claim again challenges Goodyear's termination decision. This time it alleges that Goodyear "procured Morgan Tire's breach" of the County Contracts by terminating its agreements with Morgan Tire, ECF 54, ¶ 75, and then, at a later, undefined point, communicating, in some way, with "the County of Sacramento and/or the Cit[ies]" about Morgan Tire and obtaining business for Wingfoot, *id.* ¶¶ 76-78. Morgan Tire asserts that this states a plausible claim for tortious interference with contract under Ohio law. It does not.

First, the only non-speculative conduct Morgan Tire alleges is Goodyear's termination of Morgan Tire's distribution contracts. It is hornbook law, and the law "[i]n Ohio[, that] a breach of contract does not create a tort claim." *Textron*, 684 N.E.2d at 1270. Here, Morgan Tire cannot state a claim for breach under legal or equitable principles based on the termination of the New Tire or Retread Agreements or the County Subcontract. Having failed to plead any breach, Morgan Tire cannot now side-step the bargained-for terms of those agreements by pleading the same facts, based on the same agreements, in tort. *Schachner v. Blue Cross & Blue Shield of Ohio*, 77 F.3d 889, 897 (6th Cir. 1996) ("[I]n Ohio tort actions are generally unavailable in breach of contract cases no matter how willful or malicious the breach.") (citing *Ketcham v. Miller*, 104 N.E.2d 145, 146 (Ohio 1922)).[5] If "a breach of contract does not create a tort claim," *Textron*, 684 N.E.2d at 1270, *a fortiori* no tort claim can be created by terminating a contract pursuant to its own terms.

[5] This rule is "general" because there is an exception when "a special or fiduciary relationship exists between the parties" separate from the contract. *Schachner*, 77 F.3d at 897(citation omitted). Morgan Tire alleges no such relationship here.

This is clearly correct. "[C]ontract law in Ohio permits a party to a contract to exercise a right to terminate without reason if clearly expressed in the contract without inquiry into the motive for the termination, although arguably in bad faith, if not contrary to law." *Midwestern Indem. Co. v. Luft & Assocs. Ins. Agency, Inc.*, No. 87-AP-541, 1987 WL 31285, at *2 (Ohio Ct. App. 1987); *Edelman v. Franklin Iron & Metal Corp.*, 622 N.E.2d 411, 414 (Ohio Ct. App. 1993) (same). Allowing Morgan Tire now to second-guess Goodyear's exercise of its concededly "valid and enforceable" rights based on conjecture and speculation would rewrite the plain terms of the agreements and prevent Goodyear from doing exactly what the agreements say it *can* do: "terminate[] at any time . . . *with or without cause*." ECF54-1, § 26(b) (emphasis added); ECF 54-3 § 17. That is not the rule. *Cf. Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.*, 678 N.E.2d 519, 530 (Ohio 1997) (A "contractor should not be permitted to circumvent its contract terms by virtue of labeling the action a tort."). Morgan Tire may be unhappy with Goodyear's decision, but under Ohio law, "[f]irms that have negotiated contracts are entitled to enforce them to the letter, even to the great discomfort of their trading partners." *Ed Schory & Sons, Inc. v. Francis*, 662 N.E.2d 1074, 1082 (Ohio 1996).

Nor can Morgan Tire rely on its conclusory assertions that Goodyear made negative statements about Morgan Tire to third parties (ECF 54 ¶¶ 76-77) to support this claim. Morgan Tire nowhere specifies the content of the alleged statements by Goodyear, when they were made ("on or after January 18, 2013," *id.* ¶ 76), how they were made (Goodyear "sent emails . . . and/or had conversations," *id.*), or even exactly to whom they were made ("the County of Sacramento and/or the City of Sacramento and City of Roseville," *id.*). So, the negative-statements allegations should be disregarded on grounds of speculation alone. *Twombly*, 550 U.S. at 555. In addition, Morgan Tire explicitly pleads that "Goodyear intentionally *procured Morgan*

Tire's breach of the County Contracts *by cutting of[f] Morgan Tire's supply of tires and retread material* needed to perform the County Contracts." *Id.* ¶ 75 (emphasis added); *see also id.* ¶ 40 ("As a direct and proximate cause of the Termination Letter," which terminated the agreements, "Morgan Tire did not have enough of each specific tire material on hand and was unable to honor its County Contracts."). Morgan Tire's claim, then, is that the *termination of the Agreements—not* any after-the-fact statements by Goodyear to the Local Governments—actually "procured Morgan Tire's breach." *Id.* ¶ 75.[6]

Second, this claim fails because Morgan Tire does not plead (as it must) a breach of the County Contracts *by a third party* (here, the Local Governments). In *Kenty v. Transamerica Premium Ins. Co.*, 650 N.E.2d 863, 866 (Ohio 1995), the Ohio Supreme Court "adopt[ed] the analysis of the Restatement and h[e]ld that in order to recover for a claim of intentional interference with a contract, one must prove[, among other elements,] the wrongdoer's intentional procurement of the contract's breach." Regarding this requirement, the Restatement specifies that the procurement must be via "inducing or otherwise *causing the **third person** not to perform the contract*." *Id.* (quoting *Restatement (Second) of Torts* § 766 (1979)) (emphasis added); *see also Universal Windows & Doors, Inc. v. Eagle Window & Door, Inc.*, 689 N.E.2d 56, 61 (Ohio Ct. App. 1996) ("Tortious interference with a contract necessarily requires causing a third person not to perform the contract."); *Battista v. Lebanon Trotting Ass'n*, 538 F.2d 111, 116 (6th Cir. 1976) (intentional interference with contract claim "arises when one party to a contract is induced to breach the contract by the malicious acts of a third person who is not a party to the contract. *The other party* to the contract can then sue the third person who induced the breach.") (emphasis added); *cf. Baumgardner*, 697 F. Supp. 2d at 809 (Lioi, J.) ("'[A]n actual

[6] Wingfoot's only alleged "impropriety" was providing pricing information to the Local Governments. ECF 54, ¶ 78. But, as shown, Morgan Tire specifically alleges it was Goodyear's *termination of the agreements* that procured Morgan Tire's breach of the County Contracts. *Id.* ¶ 75.

breach of the contract' *by [a] third party* is necessary to recover for intentional interference with contract." (emphasis added) (citation omitted) (applying New York law)). Because Morgan Tire does not allege that Goodyear procured a breach of the Country Contracts by a third party (here, the Local Governments), but instead that Goodyear "procured *Morgan Tire's* breach of the County Contract," ECF 54, ¶ 75 (emphasis added), this claim must be dismissed.

Third, the County Contracts, like the agreements between Morgan Tire and Goodyear, were themselves terminable on 30 days notice. ECF 54-4, at 3 ("This agreement can be cancelled at any[]time by either party upon receipt of 30 days written notice."). Ohio law does not recognize a cause of action for intentional interference with a contract terminable at will. *See Bush Truck Leasing, Inc. v. Dynamex, Inc.*, No. 1:09-cv-354, 2011 WL 53104, at *6 (S.D. Ohio 2011) (dismissing intentional interference with contract claim on contract with 90-day termination clause because Ohio law "instruct[s] that [defendant] could not tortiously interfere with or cause the breach of a contract [between plaintiff and third party] which [third party] had the right to terminate at any time"); *Mitchell v. Mid-Ohio Emergency Servs., L.L.C.*, No. 03AP-981, 2004 WL 2803419, at *9 (Ohio Ct. App. 2004) ("no interference with contractual relations if the contract is terminable at-will"); *Emergency Preemption, Inc. v. Emergency Preemption Sys., Inc.*, No. 71350, 1997 WL 473093, at *6 (Ohio Ct. App. Aug. 14, 1997). This is because "any interference with [an at-will contract] that induces its termination is primarily an interference with the future relation[s] between the parties . . . . As for the[se] future hopes [plaintiff] has no legal right . . . , and when the contract is terminated by choice of the third person there is no breach of it." *Hoyt, Inc. v. Gordon & Assocs., Inc.*, 662 N.E.2d 1088, 1097 (Ohio Ct. App. 1995) (quoting *Restatement (Second) of Torts* § 768 cmt. i.)). Because Morgan

Tire pleads intentional interference with contracts that, just like the contract in *Hoyt*, were terminable at-will on 30 days notice, its claim must be dismissed.

F. Morgan Tire's Fifth Claim for Intentional Interference with Prospective Business Relations Must Be Dismissed for the Same Reasons as Its Fourth Claim.

Morgan Tire's fifth claim challenges much of the same conduct alleged in its fourth claim as intentional interference with *prospective* business advantage rather than contract. Morgan Tire again alleges that Goodyear made negative statements about Morgan Tire (and again the exact content of the statements and precisely how, when, to whom they were made is not alleged) to the Local Governments and National Accounts (defined previously as "Goodyear's national accounts, including Penske, UPS and Federal Express," ECF 54, ¶ 18), in order to "induce" them "to use the services of Wingfoot." *Id.* ¶ 83. As a result, Morgan Tire claims it "lost the expected economic advantage of its contracts and of an ongoing relationship with" those entities. *Id.* ¶ 87. This claim is also implausible on its face, *Twombly*, 550 U.S. at 555, and it should be dismissed for the same reasons as Morgan Tire's fourth claim.

For example, this claim fails because, like Morgan Tire's fourth claim, it is inextricably linked to Goodyear's decision to terminate its agreements with Morgan Tire. It is implausible that any alleged statements by Goodyear had a material impact on the willingness of the Local Governments or any National Account to continue to do business with Morgan Tire *for Goodyear products*, ECF 54, ¶ 83, when Morgan Tire had no ability to purchase those products from Goodyear. Indeed, the National Accounts were Goodyear's national accounts. *Id.* ¶ 18. Morgan Tire "lost" them because it no longer was a Goodyear distributor. *Id.* ¶ 40. The claimed after-the-fact negative statements are therefore irrelevant. And Goodyear's decision to terminate is neither a breach of contract nor a tort, for the reasons previously explained. *See* § III.E, *supra*; *cf. Res. Title Agency, Inc. v. Morreale Real Estate Servs., Inc.*, 314 F. Supp. 2d 763, 774 (N.D.

Ohio 2004) ("If the gravamen of the complaint is for breach of contract, the cause of action will not be transformed into one sounding in tort by the charge of tortious conduct or the addition of the adverbs intentionally, willfully, and fraudulently.").

In addition, the prospective business relationships about which Morgan Tire complains—sales of *Goodyear* products to the Local Governments and the National Accounts (why else would Wingfoot be a potential alternative supplier, as alleged? (*See* ECF ¶¶ 83, 85))—are too speculative to support a tortious interference claim. If Ohio law does not recognize claims of tortious interference with contracts terminable at will (*see* § III.E, *supra*), it certainly does not sanction claims based on hoped for renewals of such contracts, like the County Contracts.[7]

G. Morgan Tire's Sixth Claim Must Be Dismissed Because Breach of the Covenant of Good Faith and Fair Dealing Is Not a Stand-Alone Claim as a Matter of Law.

Morgan Tire asserts that Goodyear breached a covenant of good faith and fair dealing by terminating its agreements with Morgan Tire, then refusing to repurchase retread stock, process warranties, or "credit" Morgan Tire for the cost of the retread machine Goodyear refused to sell it. ECF 54, ¶¶ 92-93; *see also id.* ¶ 36. These allegations state no plausible claim for relief, either.

"Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." *Krukrubo v. Fifth Third Bank*, No. 07AP-270, 2007 WL 4532689, at *4 (Ohio Ct. App. 2007) (quoting *Restatement (Second) of Contracts* § 205 (1981)); *see also Littlejohn v. Parrish*, 839 N.E.2d 49, 54 (Ohio Ct. App. 2005). But breach of this duty is not (and cannot stand alone as) a separate cause of action from a breach of contract claim. *Ireton v. JTD Realty Invs., L.L.C.*, 944 N.E.2d 1238, 1255 (Ohio Ct. C. P. 2010) (collecting cases); *Krukrubo*, 2007 WL 4532689, at *5; *Interstate Gas Supply, Inc. v. Calex Corp.*, No. 04AP-980, 2006 WL 328679, at *20 (Ohio Ct. App. 2006). Rather, the covenant is a gap-filling doctrine

[7] The fifth claim attributes the same conduct to Wingfoot as the fourth claim. It should be dismissed against Wingfoot for the same reasons that Goodyear should be dismissed, as well as the added reason stated in footnote 6.

designed to enforce the parties' intent; it cannot be used to hoist onto parties new obligations to which they never agreed. *Fultz & Thatcher v. Burrows Grp. Corp.*, No. CA2005-11-126, 2006 WL 3833971, at *6-7 (Ohio Ct. App. 2006). "Where a matter is specifically covered by the written terms of a contract, there are no implied promises in relation to that matter." *Bd. of Trs. of Union Twp. v. Planned Dev. Co. of Ohio*, No. CA2000-06-109, 2000 WL 1818540, at *4 (Ohio Ct. App. 2000); *Hamilton Ins. Servs., Inc. v. Nationwide Ins. Cos.*, 714 N.E.2d 898, 901 (Ohio 1999).

Application of these principles requires dismissal of this claim because each of the acts and omissions that Morgan Tire alleges to be a breach of the covenant is covered by the parties' agreements: Goodyear had the express right under the agreements to terminate on 30 days notice, with or without cause, § III.B, *supra*; *see also* ECF 54-3, at 2 & § 17; the process for resolving warranty claims for defective product was expressly addressed by the agreements, *id.* § 12; and the retread material and equipment were "considered" investments in performance of the contracts and were not to be a basis for post-termination liability, § III.B, *supra*; *see also* ECF 54-1, § 26(f); ECF 54-3, § 17.

H. Morgan Tire's Seventh Claim for Violation of California's Unfair Competition Law Must Be Dismissed Because It Is Barred by the Parties' Choice of Law, and in Any Event, Morgan Tire Fails to Plead the Elements of Such a Claim.

Courts in the Ninth Circuit—those with the most experience with claims under California's Business and Professions Code § 17200 (the Unfair Competition Law or UCL)—consistently hold, "A valid choice-of-law provision selecting another state's law is grounds to dismiss a claim under California's UCL." *Cont'l Airlines, Inc. v. Mundo Travel Corp.*, 412 F. Supp. 2d 1059, 1070 (E.D. Cal. 2006); *see also Century 21 Real Estate LLC v. All Prof'l Realty, Inc.*, 600 F. App'x 502, 506 (9th Cir. 2015) ("New Jersey law applies to this action, thus a California claim is unavailable."); *Aliya Medcare Fin., LLC v. Nickell*, No. CV 14-07806, 2015

WL 4163088, at *20 (C.D. Cal. July 9, 2015) (Nevada law); *Brazil v. Dell Inc.*, 585 F. Supp. 2d 1158, 1166 (N.D. Cal. 2008) (Texas law). This rule requires dismissal of Morgan Tire's UCL claim here, too, as Morgan Tire and Goodyear agreed that Ohio law governs all claims arising out of the New Tire and Retread Agreements and the County Subcontract. *See* § III.A, *supra*.

Even if Morgan Tire's UCL claim were not barred, it still would have to be dismissed because Morgan Tire has failed to plead essential elements of the claim. California's UCL prohibits "three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent." *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 973 P.2d 527, 540 (Cal. 1999) (citation omitted). Morgan Tire alleges no fraudulent or unlawful conduct, only "unfair" conduct. ECF 54, ¶ 102. In cases involving competitors (here, Morgan Tire and Wingfoot), California's Supreme Court has limited "unfair conduct" claims to those challenging "conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are *comparable to or the same as* a violation of the law, or otherwise significantly threatens or harms competition." *Cel-Tech*, 973 P.2d at 544 (emphasis added); *Golden v. Sound Inpatient Physicians Med. Grp.*, 93 F. Supp. 3d 1171, 1180 (E.D. Cal. 2015).

Not surprisingly, Morgan Tire's allegations come nowhere close to meeting this standard. Relying on the same conclusory allegations from its now-abandoned antitrust claims, ECF 1, ¶¶ 69-78, Morgan Tire asserts that Goodyear attempted to "stifle" interbrand competition for retread sales between Goodyear and Continental, a rival retread *manufacturer*, by coercing Morgan Tire to distribute retread tires exclusively for Goodyear, and then terminating Morgan Tire when it refused not to distribute Continental retreads, *see* ECF 54, ¶¶ 96-104; *see also id.* ¶¶ 32-34, 37, 47. The problem with this theory, as Goodyear and Wingfoot explained to Judge Mueller, ECF 11-1, at 15-20, is not just that it fails to allege an exclusive dealing agreement,

Roland Mach. Co. v. Dresser Indus., Inc., 749 F.2d 380, 392-93 (7th Cir. 1984), but that even if it did, it fails to allege how Goodyear's conduct could have harmed competition. Exclusive dealing agreements, particularly with distributors, are rarely anticompetitive. *ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254, 270 (3d Cir. 2012); *E. Food Servs., Inc. v. Pontifical Catholic Univ. Servs. Ass'n*, 357 F.3d 1, 8 (1st Cir. 2004); *Omega Envtl., Inc. v. Gilbarco, Inc.*, 127 F.3d 1157, 1162 (9th Cir. 1997). Indeed, they are far more likely to be procompetitive, enabling "restrained dealers to promote the defendant's brand more aggressively and to provide services desired by consumers." *Watkins & Son Pet Supplies v. Iams Co.*, 254 F.3d 607, 616 (6th Cir. 2001).

In any event, Morgan Tire makes no effort to allege the facts required to plausibly suggest that Goodyear's conduct ever was or threatened to be anticompetitive. Morgan Tire's vague and conclusory assertions about Goodyear's "superior strength and dominance," ECF 54, ¶¶ 102; *id.* ¶ 103 ("superior position"), are no substitute for the mandatory facts plausibly defining a relevant market or suggesting market power. *E. Food Servs.*, 357 F.3d at 5 (market power required); *Queen City Pizza, Inc. v. Domino's Pizza, Inc.*, 124 F.3d 430, 436 (3d Cir. 1997) (relevant market definition required). Nor do Goodyear's claimed threats to terminate, ECF 54, ¶ 101—or its actual termination of—Morgan Tire, *id.* ¶ 104, or other distributors, *id.* ¶¶ 34, 45, much less its claimed statements to customers about Morgan Tire, *id.* ¶¶ 98-99, even begin to suggest how competition *by Continental* or any other retread manufacturer was foreclosed. Morgan Tire nowhere alleges (as it must) how (or where or for how long or to what degree) these actions could have prevented (or foreclosed) Goodyear's competitors from being able to sell their products in competition with Goodyear. *Omega*, 127 F.3d at 1162; *Ryko Mfg. Co. v. Eden Servs.*, 823 F.2d 1215, 1233 (8th Cir. 1987); *Roland Mach.*, 749 F.2d at 393.

In the end, Morgan Tire has committed the classic mistake in "jilted distributor" cases: it confuses injury to itself with injury to competition at large. *NicSand, Inc. v. 3M Co.*, 507 F.3d 442, 449 (6th Cir. 2007) ("[P]laintiff can recover only if the loss stems from a competition-*reducing* aspect or effect of the defendant's behavior.") (citation omitted). The case books are littered with decisions dismissing claims by terminated dealers based on their failure to plead how their termination adversely affected competition. *See, e.g.*, *Crane & Shovel Sales Corp. v. Bucyrus-Erie Co.*, 854 F.2d 802, 806 (6th Cir. 1988); *Dunn & Mavis, Inc. v. Nu-Car Driveway*, 691 F.2d 241, 243-44 (6th Cir. 1982); *Ace Beer Distribs., Inc. v. Kohn, Inc.*, 318 F.2d 283, 287 (6th Cir. 1963). Morgan Tire's UCL claim should be dismissed for the same reason. *Celebrity Chefs Tour, LLC v. Macy's, Inc.*, 16 F. Supp. 3d 1141, 1156 (S.D. Cal. 2014).

IV. CONCLUSION

For the foregoing reasons, Defendants request that the Court dismiss, with prejudice, all of the claims in Morgan Tire's amended complaint under Rule 12(b)(6) for failure to state a claim.

Dated: December 14, 2015

Respectfully submitted,

/s/ Emmett E. Robinson
Tracy K. Stratford (0069457)
Brian K. Grube (0068846)
Emmett E. Robinson (0088537)
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114.1190
Telephone: 216.586.3939
Facsimile: 216.579.0212

Attorneys for Defendants The Goodyear Tire & Rubber Company and Wingfoot Commercial Tire Systems, LLC

LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Civil Rule 7.1(f), I certify that this case has not yet been assigned to a track. Pursuant to the Court's Initial Standing Order (ECF 46) and Local Rule 7.1(f), the page limitation for this memorandum is 20 pages. I further certify that the foregoing Memorandum adheres to this limitation and is a total of 20 pages in length.

Dated: December 14, 2015

/s/ Emmett E. Robinson
One of the Attorneys for Defendants The Goodyear Tire & Rubber Company and Wingfoot Commercial Tire Systems, LLC