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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW R. WALSH

Plaintiff,

vs.

ROKOKO ELECTRONICS, and
DOES 1 through 50, inclusive,

Defendant.

Case No.: 2:25-cv-05340-ODW-RAO

[Assigned to Hon. Otis D. Wright, II,
Courtroom 5D]

**DEFENDANT ROKOKO
ELECTRONICS' NOTICE OF
MOTION TO DISMISS AND
MOTION TO DISMISS AMENDED
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: March 9, 2026
Time: 1:30 p.m.
Place: Dept. 5D

[Concurrently Filed With Request for
Judicial Notice; [Proposed] Order]

State Court Action Filed: May 12, 2025
Removal Date: June 12, 2025
Trial Date: March 9, 2027

1 **TO THE HONORABLE COURT, THE CLERK, AND PLAINTIFF**
2 **APPEARING PRO SE:**

3 PLEASE TAKE NOTICE that on March 9, 2026, at 1:30 p.m., or as soon
4 thereafter as counsel may be heard, in the courtroom of Judge Otis D. Wright, II, located
5 at 350 W. 1st Street, Los Angeles, CA 90012, Defendant Rokoko Electronics
6 (“Rokoko”) will and hereby does move the Court for an order dismissing the Amended
7 Complaint filed by Plaintiff Matthew R. Walsh in its entirety, pursuant to Federal Rule
8 of Civil Procedure 12(b)(6), on the grounds that the Plaintiff has failed to state a claim
9 upon which relief can be granted as to all causes of action.

10 This Motion is made following the meet and confer discussion between counsel
11 for Rokoko and Plaintiff on January 20, 2026.

12 This Motion to Dismiss is based on this Notice of Motion, the supporting
13 Memorandum of Points and Authorities, the Request for Judicial Notice, all of the
14 pleadings, filings, and records in this proceeding, all other matters of which the Court
15 may take judicial notice, and any argument and evidence that may be presented to or
16 considered by the Court prior to its ruling.

17
18
19 DATED: January 27, 2026

REED SMITH LLP

20
21 By: /s/ Katherine J. Ellena
22 Katherine J. Ellena
23 Michael Galibois (*pro hac vice*)
Emily Graue (*pro hac vice*)
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24 *Attorneys for Defendant*
25 *Rokoko Electronics*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This action arises out of the sale of several Rokoko Electronics (“Rokoko”) products to Plaintiff more than five years ago, which Plaintiff contends are no longer operable. Just as with his original complaint, Plaintiff’s Amended Complaint suffers from several series pleading deficiencies and each of his five causes of action fail as a matter for law for the following reasons.

First, Plaintiff has failed to satisfy the elements of a tortious interference claim. While Plaintiff alleges that he “executed platform licensing and distribution contractual agreements” with Nintendo, Sony and Valve, the “evidence” of those agreements submitted by Plaintiff do not support that and are instead seemingly auto-generated emails and screenshots of an online registration on a Nintendo platform. Moreover, Plaintiff fails to sufficiently plead that Rokoko had knowledge of those purported contractual agreements and intentionally acted in an effort to disrupt them when it allegedly deployed a general “firmware update.” Finally, Plaintiff’s claimed damages are conclusory, speculative, and not proximately caused by Rokoko.

Second, Plaintiff’s misappropriation claim fails because Plaintiff cannot plead that his “animations” are entitled to trade secret protection and any protection is undermined by his voluntary disclosure of that information to the general public. Moreover, Plaintiff did not have a valid copyright until less than two months ago—more than a year after he discontinued using Rokoko’s services and more than six months after he filed this action. Finally, Plaintiff has not sufficiently pled that Rokoko misappropriated any protected information through improper means or that Rokoko proximately caused damages to Plaintiff.

Third, Plaintiff’s copyright infringement and DMCA causes of action fail because he did not obtain a valid copyright prior to initiating this action, failed to show that any of his content was actually copied or distributed in its original form, failed to specifically plead any “substantially similar” work that is allegedly being infringed

1 upon, or that Rokoko had the requisite intent required under the DMCA. Moreover,
2 Plaintiff has also conceded that Rokoko's License Agreement permits Rokoko to use
3 and collect User Content.

4 **Fourth**, Plaintiff's RICO cause of action fails because it is a new cause of action
5 asserted for the first time in this Amended Complaint that exceeds the limited leave by
6 this Court to amend and because Plaintiff has not satisfied any of the necessary elements
7 for a RICO claim—let alone the heightened pleading standard under Fed. R. Civ. P.
8 9(b).

9 Plaintiff's Amended Complaint also includes a jury demand that is untimely and
10 therefore waived.

11 Accordingly, and because any further attempts by Plaintiff to plead a claim for
12 relief would be futile, this Court should dismiss Plaintiff's Amended Complaint in its
13 entirety once and for all and without leave to amend.

14 **II. BACKGROUND**

15 Rokoko is a developer of motion capture and animation technology products.
16 Am. Compl., 1:15-17. In September and December 2020, Plaintiff, a self-proclaimed
17 video game developer, purchased products from Rokoko. Am. Compl., 1:12-17. The
18 crux of this action arises out of Plaintiff's displeasure with Rokoko's products, which
19 he contends have interfered with the development of his video game, The Next World.
20 Am. Compl., 8:143-152.

21 Plaintiff initiated this action on May 12, 2025, asserting fourteen causes of action
22 against Rokoko. ECF No. 1-1. On December 22, 2025, the Court granted Rokoko's
23 motion to dismiss in full, dismissing six causes of action with prejudice and eight causes
24 of action with leave to amend. ECF No. 113.

25 Two days later, on December 24, 2025, Plaintiff filed his amended complaint,
26 asserting causes of action for (1) tortious interference with prospective contract; (2)
27 misappropriation of intellectual property; (3) intellectual property infringement; (4) a
28

1 statutory cause of action for DMCA violations; and, for the first time (5) a new RICO
2 cause of action. *See generally* Am. Compl.

3 The Amended Complaint suffers from the same deficiencies as his original
4 complaint and contains unfounded allegations that Rokoko has stolen Plaintiff's work
5 and sold it to third parties, committed wire fraud, and engaged in racketeering. *See*
6 *generally* Am. Compl.

7 **III. ARGUMENT**

8 **A. Legal Standards.**

9 **1. Federal Rule of Civil Procedure 9(b).**

10 Rule 9(b) requires that claims grounded in fraud "state with particularity the
11 circumstances constituting fraud." Fed. R. Civ. P. 9(b). To satisfy this heightened
12 standard, "claims sounding in fraud must allege 'an account of the time, place, and
13 specific content of the false representations as well as the identities of the parties to the
14 misrepresentations.'" *Davidson v. Apple, Inc.*, No. 16-CV-04942-LHK, 2017 WL
15 976048, at *4 (N.D. Cal. Mar. 14, 2017) (quoting *Swartz v. KPMG LLP*, 476 F.3d 756,
16 764 (9th Cir. 2007)) (per curiam). When asserting a fraud-based claim, the plaintiff
17 must also set forth "what is false or misleading about a statement, and why it is false."
18 *Id.* (quoting *Ebeid ex rel. U.S. v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010)). This
19 heightened pleading standard applies to RICO claims. *Deon Best v. Janice Smalls*
20 *Combs*, 2025 U.S. Dist. LEXIS 186343, at *14 (C.D. Cal. Sept. 19, 2025).

21 **2. Federal Rule of Civil Procedure 12(b)(6).**

22 Rule 12(b)(6) requires dismissal of complaints that "fail to state a claim upon
23 which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6)
24 motion, a complaint's "[f]actual allegations must be enough to raise a right to relief
25 above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). This
26 "requires more than labels and conclusions, and a formulaic recitation of the elements
27 of a cause of action will not do." *Id.*

1 In ruling on a FRCP 12(b)(6) motion, “courts are not bound to accept as true a
2 legal conclusion couched as a factual allegation.” *Id.* (citation omitted). Courts also do
3 not have to “accept as true allegations...that are merely conclusory, unwarranted
4 deductions of fact, or unreasonable inferences.” *Daniels-Hall v. National Educ. Ass’n*,
5 629 F.3d 992, 998 (9th Cir. 2010) (citing *Manzarek v. St. Paul Fire & Marine Ins. Co.*,
6 519 F.3d 1025, 1031 (9th Cir. 2008)). On such a motion, the Court may consider
7 “documents incorporated into the complaint by reference, and matters of which a court
8 may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308,
9 322 (2007).

10 **B. Plaintiff’s Tortious Interference Cause Of Action Fails As A Matter**
11 **Of Law.**

12 “The elements of a claim of interference with prospective economic advantage
13 are: (1) an economic relationship between the plaintiff and some third party, with the
14 probability of future economic benefit to the plaintiff; (2) the defendant’s knowledge of
15 the relationship; (3) intentional [or negligent] acts on the part of the defendant designed
16 to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic
17 harm to the plaintiff proximately caused by the acts of the defendant.” *Crown Imports,*
18 *LLC v. Superior Court*, 223 Cal. App. 4th 1395, 1404 (2014). Plaintiff must also
19 establish that Rokoko engaged in an independently wrongful act. *See Della Penna v.*
20 *Toyota Motor Sales, U.S.A., Inc.*, 11 Cal. 4th 376, 393 (1995). “An act is independently
21 ‘wrongful’ if it is unlawful, *i.e.*, ‘if it is proscribed by some constitutional, statutory,
22 regulatory, common law, or other determinable legal standard.’” *Pac. Steel Grp. v. Com.*
23 *Metals Co.*, 600 F. Supp. 3d 1056, 1081 (N.D. Cal. 2022). Here, Plaintiff cannot satisfy
24 any of the elements of a tortious interference cause of action.

25 As to the first element, to demonstrate an economic relationship with a third
26 party, Plaintiff must show that: (1) there is an existing relationship and (2) that
27 relationship has the probability of an economic benefit to Plaintiff. *CBD Franchising,*
28 *Inc. v. Dres*, 2023 U.S. Dist. LEXIS 221346, at *10 (C.D. Cal. 2023) (citing *Roy Allan*

1 *Slurry Seal, Inc. v. American Asphalt South, Inc.*, 2 Cal.5th 505, 512 (Cal. 2017)).
2 Plaintiff alleges that he has “contractual agreements” with Nintendo, Sony and Valve,
3 as well as “cast members, composers, and production contractors.” Am. Compl., 7:118-
4 125. The evidence Plaintiff submits of those “contractual agreements” are a screenshot
5 of an auto-generated email from Nintendo, a screenshot from a Nintendo Wiki webpage,
6 and heavily redacted screenshots of purported contracts with individuals for services
7 related to Plaintiff’s videogame. *See* ECF No. 114-1, Exs. 1-3. Further, Plaintiff fails to
8 plead that there is a probability of economic benefit with these alleged relationships.
9 While he states that he has released a game this way before, he does not state that he
10 made any money off the game. Am. Compl., 7:128-31. Without more, these conclusory
11 allegations are insufficient to plead an economic relationship between Plaintiff and
12 those third parties.

13 As to the second and third elements, Plaintiff’s Amended Complaint again fails
14 to show that Rokoko had knowledge of the relationships or intentionally (or negligently)
15 acted in a way that was designed to disrupt those relationships. *See name.space, Inc. v.*
16 *Internet Corp. for Assigned Names & Numbers*, No. CV 12-8676 PA (PLAx), 2013 WL
17 2151478, at *9 (C.D. Cal. Mar. 4, 2013) (Anderson, J.), *aff’d*, 795 F.3d 1124 (9th Cir.
18 2015) (dismissing tortious interference with prospective economic advantage claim
19 where plaintiff failed to allege “any intentional actions” by defendant that were
20 “designed to disrupt” plaintiff’s alleged economic relationships or any “evidentiary
21 facts of actual disruption and resulting economic harm.”). The California Supreme
22 Court has held that “conduct must be intended to affect the contract of a specific
23 person. It is not enough that one has been prevented from obtaining performance of a
24 contract as a result of the actor’s conduct. . . . Only when the actor’s conduct is intended
25 to affect a specific person is the actor subject to liability under this rule.” *Ramona*
26 *Manor Convalescent Hosp. v. Care Enterprises*, 225 Cal. Rptr. 120 (1986) (citing Rest.
27 2d Torts, § 766, com. p).

28 The most Plaintiff can allege is that Rokoko released a “firmware update” that

1 interfered with his game development. Am. Compl., 8:144-153. A general firmware
2 update does not show Rokoko's intent to interfere with or disrupt Plaintiff's contractual
3 relationships. *Go Daddy Operating Co., LLC v. Ghaznavi*, 2018 WL 1091257, at *9
4 (N.D. Cal. Feb. 28, 2018).

5 As for the fourth and fifth elements, Plaintiff cannot plausibly plead that the
6 purported "contracts" were actually disrupted or that he has suffered economic harm
7 ***proximately caused by*** Rokoko's actions. *AccuImage Diagnostics Corp v. Terarecon,*
8 *Inc.*, 260 F. Supp. 2d 941, 956 (N.D. Cal. 2003). Put simply, Plaintiff cannot explain
9 how a "firmware update" was the but-for cause of his loss of "press momentum," of
10 Sony allegedly suspending his "developer account," or of the halting of "early talks for
11 a TV series," "two books, an ARG game and clothing merchandise." Am. Compl.,
12 9:157-162; *see Roy Allan Shurry Seal, Inc. v. Am. Asphalt S., Inc.*, 2 Cal. 5th 505, 515
13 (2017) ("[A] cause of action for tortious interference has been found lacking when either
14 the economic relationship with a third party is too attenuated or the probability of
15 economic benefit too speculative."). Moreover, Plaintiff has not pled that Rokoko was
16 aware of any purported contracts for an alleged TV series, books or merchandising.

17 Accordingly, Plaintiff's tortious interference cause of action fails as a matter of
18 law.

19 **C. Plaintiff's Cause Of Action For "Misappropriation Of Intellectual**
20 **Property" Fails As A Matter Of Law.**

21 Plaintiff's "misappropriation of intellectual property" cause of action fails for
22 several reasons. To the extent Plaintiff is attempting to state a claim for trade secret
23 misappropriation, a prima facie claim "requires the plaintiff to demonstrate: (1) the
24 plaintiff owned a trade secret, (2) the defendant acquired, disclosed, or used the
25 plaintiff's trade secret through improper means, and (3) the defendant's actions
26 damaged the plaintiff." *Magic Laundry Servs., Inc. v. Workers United Serv. Emps. Int'l*
27 *Union*, No. CV-12-9654-MWF (AJWx), 2013 WL 1409530, at *3 (C.D. Cal. Apr. 8,
28 2013).

**1. Plaintiff Has Failed To Plead A Trade Secret With Specificity
And, In Any Event, His Animations Are Not “Trade Secrets.”**

Information is considered a trade secret if it: “(1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Civ. Code § 3421.1(d). “Courts in this Circuit have found broad, categorical descriptions of trade secrets insufficient to survive the pleading stage.” *PMM Holdings, LLC v. William W. Meyer & Sons, Inc.*, 2025 U.S. Dist. LEXIS 267732, *34 (E.D. Cal. Dec. 30, 2025); *see also Space Data Corp. v. X*, 2017 U.S. Dist. LEXIS 22571, 2017 WL 5013363, at *2 (N.D. Cal. Feb. 16, 2017) (finding plaintiff did not sufficiently plead a trade secret where plaintiff described the trade secrets as “data on the environment in the stratosphere” and “data on the propagation of radio signals from stratospheric balloon-based transceivers”).

Here, the most Plaintiff has alleged is that he “owns proprietary designed, directed, and recorded motion-capture data.” Am. Compl., 9:171-172. “These allegations do not satisfy the Rule 8 pleading requirements.” *Space Data Corp.*, 2017 U.S. Dist. LEXIS 22571 at *4.

Moreover, Plaintiff terminated any ability to claim a trade secret over his animations by destroying their secrecy. Plaintiff contends that his animations were used “in his screenplay for use in his videogame.” Am. Compl., 9:176-10:177. He further alleges, and provides documents in support, that he displayed these animations to the public at a “Hollywood release event” in August 2025, all of which underscores that the animations are not entitled to trade secret protection. *See* ECF No. 114-1, pp. 58-65. He also encouraged press to promote and repost his trailer for the videogame, which showcases his animations. Am. Compl. Ex. 17, p. 69. The posts do not just show the animations, they also show behind the scenes filming, editing, a book story board, and scripts. *See* Am. Compl., Exs. 6, 7, 23, 53. These public disclosures terminate the

1 existence of a trade secret. *Stutz Motor Car of Am. v. Reebok Int'l, Ltd.*, 909 F. Supp.
2 1353, 1359 (C.D. Cal. 1995) (“In light of this requirement of secrecy, it is clear that an
3 unprotected disclosure of the holder’s secret terminates the existence of the trade
4 secret.”). Moreover, by voluntarily uploading his animations to Rokoko’s user platform,
5 Plaintiff further terminated any potentially applicable trade secret protections that were
6 afforded to his animations.

7 **2. Plaintiff Has Failed To Plead A Trade Secret Misappropriation.**

8 The CUTSA defines “misappropriation,” in relevant part, as “(1) acquisition of a
9 trade secret of another by a person who knows or has reason to know that the trade
10 secret was acquired by improper means; or (2) disclosure or use of a trade secret of
11 another without express or implied consent by a person who . . . [u]sed improper means
12 to acquire knowledge of the trade secret.” Civ. Code § 3426.1(b). The plaintiff must
13 allege facts sufficient to show that the defendant “‘acquired, disclosed, or used the
14 plaintiff’s trade secret *through improper means*.’” *Cytodyn, Inc. v. Amerimmune*
15 *Pharm., Inc.*, 160 Cal. App. 4th 288, 297 (2008) (emphasis added) (citation omitted).
16 “Improper means” include “theft, bribery, misrepresentation, breach or inducement of
17 a breach of a duty to maintain secrecy, or espionage through electronic or other means.”
18 Civ. Code § 3426.1(a). As with the other elements of misappropriation of trade secrets,
19 the plaintiff may not rely on “conclusory, formulaic allegation[s]” to salvage the
20 element of misappropriation. *Epicor Software Corp. v. Alternative Tech. Solutions, Inc.*,
21 2013 WL 12130024, at *3 (C.D. Cal. Dec. 2, 2013).

22 Here, Plaintiff fails to allege a single act by Rokoko where it allegedly acquired
23 protected information through improper means. The crux of Plaintiff’s allegations are
24 that Rokoko used “hidden code” that “discretely harvested” Plaintiff’s intellectual
25 property after Plaintiff *voluntarily* uploaded the data to Rokoko’s platform. *See* Am.
26 Compl., 11:197-198. Moreover, any alleged “collection” by Rokoko of a consumer’s
27 content is expressly permitted by Rokoko’s License Agreement and agreed to through
28 a consumer’s continued use of the platform, which provides:

1 ***You agree that we may collect and use (i) User Content, (ii) metrics***
2 ***regarding your use of the Services, including evaluating how you use the***
3 ***Services, which shall be referred to as “Usage Data”, (iii) technical data,***
4 ***and (iv) related information that is gathered periodically, (a) to provide the***
5 ***Services, (b) to improve the Services, including developing new***
6 ***features/Services or improving existing features, technologies or products,***
7 ***to facilitate the provision of updates, for product support purposes, (c) to***
8 ***improve any other services or products provided by the Company and (d)***
9 ***to sub-license this to third parties in an anonymized form never to be***
10 ***redistributed in its original form strictly for the purpose of developing***
11 ***and improving their services or products.***

12 Am. Compl. Ex. 44, p. 149 (emphasis added).

13 The License Agreement defines “User Content” as “all information and content
14 that you create/generate using, submit to use, or use with or store within the Site and/or
15 Services (including animations, 3D models, images, audio, and related content, as well
16 as user comments)” and specifically states “[e]xcept as otherwise set forth in the Terms,
17 we do not claim ownership over any User Content.” *See* Request for Judicial Notice
18 (“RJN”), Ex. 4, Rokoko License Agreement, 3.1.¹

19 The License Agreement also provides:

20 ***You retain all your rights to User Content*** and are responsible for
21 protecting those rights. You hereby grant us a perpetual, worldwide, non-
22 exclusive, royalty-free, sublicensable right to access, use, copy, and
23 modify any intellectual property rights that arise in connection with the
24 User Content, Usage Data and any other Data related to you (if any),
25 strictly for purposes of providing the Services and to exercise such other
26 rights, which are explicitly set out in these Terms. ***All User Content is to***
27 ***be fully anonymized and never distributed in its original form from any***
28 ***subcontract or third-party licensor.***

29 Am. Compl. Ex. 44, p. 148 (emphasis added).

30 The License Agreement further states that “[y]ou must accept the terms of this
31 agreement before continuing with the installation.” *Id.* Nothing within Rokoko’s
32 License Agreement or otherwise supports Plaintiff’s allegations that Rokoko

33

34 ¹ The Court may also consider exhibits attached to a motion to dismiss which are: (1) central to the
35 plaintiff’s claim; and (2) undisputed. *See Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005).

misappropriated his protected intellectual property through improper means.

3. Plaintiff's Copyright Infringement Claim Also Fails.

To state a claim for copyright infringement, a plaintiff must allege two elements: “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *Funky Films, Inc. v. Time Warner Entm’t Co., L.P.*, 462 F.3d 1072, 1076 (9th Cir. 2006). “[N]o civil action for infringement of the copyright in any United States work shall be instituted until the preregistration or registration of the copyright claim has been made in accordance with this title.” 17 U.S.C. § 411(a). “Put simply, copyright owners may not file an infringement suit before and until they have registered the relevant work.” *Bland v. Moody*, 2025 U.S. Dist. LEXIS 269690, *2 (C.D. Cal. Feb 5, 2025). This registration requirement “is thus akin to an administrative exhaustion requirement that the owner must satisfy before suing to enforce ownership rights.” *Fourth Estate Pub. Ben. Corp. v. Wall-Street.com, LLC*, 586 U.S. 296, 296 (2019). Here, Plaintiff’s cause of action for copyright infringement fails as a matter of law for several reasons.

First, Plaintiff has failed to demonstrate that he obtained a valid copyright prior to initiating this action. Plaintiff alleges that he has two copyrights, Pau 4-279-489 and #14,954,598,732. *See* Am. Compl., 2:36-3:39. Plaintiff fails to attach proof of either copyright, but the first (Pau 4-279-489) is available on the Copyright Office’s website. *See* RJN, Ex. 5. The second (#14,954,598,732) is untraceable.

Copyright Pau 4-279-489 has an effective date of registration of July 6, 2025 and a copyright decision date of November 25, 2025. *See id.* This action was filed on May 12, 2025, two months prior to Plaintiff’s application to the Copyright Office and six months prior to the Copyright Office’s approval. Accordingly, Plaintiff had not filed with the Copyright Office at the time of initiating this lawsuit, let alone had an approved copyright. As for the second alleged copyright (#14,954,598,732), Plaintiff bears the burden of proof of demonstrating that a valid copyright registration exists and he has failed to do so. *See Jat Wheels, Inc. v. DB Motoring Grp., Inc.*, 2016 U.S. Dist. LEXIS

1 191940, at *6 (C.D. Cal. Feb. 11, 2016).

2 **Second**, in order to satisfy the copying requirement of the second prong, Plaintiff
3 must allege that “the infringer had access to plaintiff’s copyrighted work and that the
4 works at issue are substantially similar in their protected elements.” *Cavalier v. Random*
5 *House, Inc.*, 297 F.3d 815, 822 (9th Cir. 2002). As Plaintiff concedes, he stopped using
6 Rokoko’s services in September 2024 (Am. Compl., 5:89-90) yet he did not receive a
7 copyright over The Next World videogame until more than one year later and after the
8 filing of this lawsuit—November 25, 2025. RJN, Ex. 5. Moreover, Plaintiff has not
9 made any allegations regarding what purported work his “substantially similar” to what
10 he contends is entitled to copyright protection.

11 **Third**, Rokoko’s License Agreement, which Plaintiff relies upon at length in his
12 Amended Complaint, expressly authorizes Rokoko to use and collect any User Content,
13 which Rokoko confirms will never be distributed in its original form. The existence of
14 a license is an affirmative defense to a copyright infringement claim. *Worldwide*
15 *Church of God v. Philadelphia Church of God, Inc.*, 227 F.3d 1110, 1114 (9th Cir.
16 2000); *see also Sun Microsystems v. Microsoft Corp.*, 188 F.3d 1115, 1121 (9th Cir.
17 1999) (“Generally, a ‘copyright owner who grants a nonexclusive license to use his
18 copyrighted material waives his right to sue the licensee for copyright infringement”);
19 *Fontana v. Harra*, 2012 WL 990014, *9 (C.D. Cal. Mar. 12, 2013) (dismissing
20 copyright infringement claim because the plaintiff pled facts that gave rise to an
21 affirmative defense of license).²

22 **4. Plaintiff Fails To Plead Any Damages.**

23 In order establish misappropriation of a trade secret, Plaintiff must show that “the
24 defendant’s actions damaged the plaintiff.” *Magic Laundry Servs., Inc. v. Workers*
25 *United Serv. Emps. Int’l Union*, No. CV-12-9654-MWF (AJWx), 2013 WL 1409530,

26 _____
27 ² When a complaint’s allegations suffice to establish an affirmative defense, a defendant
28 can properly raise the defense in a 12(b)(6) motion. *Rivera v. Peri & Sons Farms, Inc.*,
735 F.3d 892, 902 (9th Cir. 2013).

1 at *3 (C.D. Cal. Apr. 8, 2013). Here, Plaintiff fails to plead any damages for his
2 misappropriation cause of action.

3 Accordingly, Plaintiff's claim for misappropriation must be dismissed without
4 leave to amend.

5 **D. Plaintiff's Copyright Infringement Cause Of Action Fails As A Matter**
6 **Of Law.**

7 To survive a motion to dismiss, a complaint based on copyright infringement
8 must state: (1) ownership of a valid copyright, and (2) violation by the alleged infringer
9 of at least one of the exclusive rights granted to copyright owners under the Copyright
10 Act. 17 U.S.C. § 501(a); *UMG Recordings, Inc. v. Augusto*, 628 F.3d 1175, 1178 (9th
11 Cir. 2011). These include the right to reproduce or distribute the copyrighted work, and
12 to authorize reproduction or distribution of the work. 17 U.S.C. § 106.

13 For all of the reasons explained above in III.C, Plaintiff cannot pled a viable claim
14 for copyright infringement and the cause of action should be dismissed without leave to
15 amend.

16 **E. Plaintiff's Cause Of Action Under The Digital Millennium Copyright**
17 **Act Fails As A Matter Of Law.**

18 To state a claim under Section 1202(b)(1) and b(3), Plaintiff must make an
19 affirmative showing that (1) Rokoko "intentionally remov[ed] or alter[ed] copyright
20 management information" and distributed the information with knowledge that it had
21 been removed or altered "without authority of the copyright owner or the law" and (2)
22 Rokoko knew or had "reasonable grounds to know" that such removal or distribution
23 would "induce, enable, facilitate, or conceal [copyright] infringement." 17 U.S.C. §
24 1202(b); *see also Stevens v. Corelogic, Inc.*, 899 F.3d 666, 674 (9th Cir. 2018)
25 (requiring plaintiff to demonstrate "pattern of conduct or modus operandi" to establish
26 the requisite mental state); *Falkner v. Gen. Motors LLC*, 393 F. Supp. 3d 927, 938 (C.D.
27 Cal. 2018). A DMCA claim is a type of copyright infringement claim. *See UMG*
28 *Recordings*, 718 F.3d at 1021 n. 12 ("Proper DMCA notice under 17 U.S.C. § 512(c)(3)

1 provides only a *claim* of infringement...”).

2 As detailed below, Plaintiff pleads neither a plausible causal link between CMI
3 removal and concealment nor a coherent, non-conclusory theory of distribution—let
4 alone the culpable scienter that both provisions require. *See Andersen v. Stability AI*
5 *Ltd.*, 700 F. Supp. 3d 853, 871 (N.D. Cal. 2023) (holding that a plaintiff “must plead
6 facts plausibly showing that the alleged infringer had th[e] required mental state” “[a]t
7 the pleading stage”).

8 **1. Plaintiff’s DMCA Claim Fails For The Same Reasons As His**
9 **Copyright Infringement Claim.**

10 Here, Plaintiff’s claim fails for the same reason his copyright infringement claim
11 fails, including because he did not have a valid copyright registration at the time he used
12 Rokoko’s services or at the time of the filing of this lawsuit. *See, e.g., Coupons, Inc. v.*
13 *Stottlemire*, 588 F. Supp. 2d 1069, 1073 (N.D. Cal. 2008) (valid copyright required to
14 state a claim under the DMCA).

15 Moreover, Plaintiff cannot plausibly plead that any content he provided to
16 Rokoko through the use of its services was distributed in its original form or at all.
17 Plaintiff admits that he ceased using Rokoko’s services in September 2024. Am.
18 Compl., 5:89-90. The License Agreement which Plaintiff bases his DMCA cause of
19 action on, however, were not updated until March 2025, more than six months after
20 Plaintiff terminated his use of Rokoko’s services. Am. Compl. Ex. 50, p. 171. Without
21 distribution, Plaintiff is unable to establish an injury and his DMCA claim fails as a
22 matter of law and should be dismissed with prejudice.

23 **2. Plaintiff Fails To Establish The Requisite Intent.**

24 A violation of the DMCA requires “the defendant to possess the mental state of
25 knowing, or having a reasonable basis to know, that his actions ‘will induce, enable,
26 facilitate, or conceal’ infringement.” *Stevens*, 899 F.3d at 673. “[T]he mental state
27 requirement in Section 1202(b) must have a more specific application than the universal
28 possibility of encouraging infringement; specific allegations as to how identifiable

1 infringements ‘will’ be affected are necessary.” *Id.* at 674. The Ninth Circuit has held
2 to establish knowledge or having reasonable grounds to know that conduct will induce,
3 enable, facilitate or conceal infringement under the DMCA, a plaintiff “must make an
4 affirmative showing” by “demonstrating a past ‘pattern of conduct’ or ‘modus
5 operandi’, that the defendant was aware or had reasonable grounds to be aware of the
6 probable future impact of its actions.” *Id.* “At the pleading stage, the plaintiff must plead
7 facts plausibly showing that the alleged infringer had the required mental state.” *Smith*
8 *v. Oceanic Pres. Soc’y*, 2025 U.S. Dist. LEXIS 65158, at *8 (C.D. Cal. April 2, 2025).

9 Here, Plaintiff has failed to plead a past “pattern of conduct” or “modus operandi”
10 to support his DMCA claim. The most he can allege is that Rokoko “removed or altered
11 Plaintiff’s CMI” while “knowing or having reasonable grounds to know, that such
12 removal would induce, enable, facilitate, or conceal infringement.” Mot., 17:311-314.
13 Such allegation simply recites the statutory language and is not particularized enough
14 to state a claim for relief. *Lin v. Select Portfolio Servicing, Inc.*, 2016 U.S. Dist. LEXIS
15 187696, *8 (C.D. Cal. July 6, 2016) (dismissing a complaint where “Plaintiffs
16 merely recite the statutory language without alleging specific facts beyond their
17 conclusory statements that mirror the statute.”).

18 Moreover, Plaintiff does not allege with sufficient specificity exactly which
19 copyrighted works were altered or distributed. *See Free Speech Sys., LLC v. Menzel*,
20 390 F. Supp. 3d 1162, 1175 (N.D. Cal. 2019) (granting a motion to dismiss a DMCA
21 claim where the plaintiff failed to provide any facts to identify exactly what copyrighted
22 works had CMI removed, what the defendants allegedly distributed, or how it was
23 distributed).

24 Therefore, Plaintiff’s DMCA claim should be dismissed with prejudice.
25
26
27
28

F. Plaintiff's RICO Claim Exceeds His Limited Leave To Amend And Fails As A Matter Of Law.

1. Plaintiff Was Given Leave To Amend Specific Causes Of Action.

District Courts in this Circuit routinely dismiss or strike new causes of action added without leave where a prior order granting leave to amend limited any amendments to specific causes of action that had already been pled. “[W]here leave to amend is given to cure deficiencies in *certain specified claims*, courts have held that new claims alleged for the first time in the amended pleading should be dismissed or stricken.” *Ketab Corp. v. Mesriani & Assocs.*, 2015 U.S. Dist. LEXIS 163133, at *22 (C.D. Cal. Dec. 4, 2015) (emphasis added). When a court’s order only grants leave to amend existing causes of action, a plaintiff must seek leave of court or a defendant’s written consent to add additional causes of action. The failure to do so makes the additional causes of action outside the scope of the leave to amend and they should be stricken on that basis. *Benton v. Baker Hughes*, 2013 U.S. Dist. LEXIS 94988, at *8 (C.D. Cal. June 30, 2013); *see also Crane v. Yarborough*, 2012 U.S. Dist. LEXIS 43538, at *42 n. 14 (C.D. Cal. Feb. 6, 2012) (“it would be appropriate to strike plaintiff’s First Amendment retaliation claim because the addition of such claim which has been raised for the first time in the Second Amended Complaint exceeds the scope of the leave to amend...”); *Kennedy v. Full Tilt Poker*, 2010 U.S. Dist. LEXIS 112119 (C.D. Cal. Oct. 12, 2010) (striking third amended complaint because plaintiffs’ addition of claims and defendants “exceeded the permissible scope of the leave to amend”).

California law unambiguously establishes that Plaintiff’s newly asserted RICO claim should be dismissed as exceeding the limited leave granted by this Court’s order. Plaintiff’s RICO cause of action was not pled in his original complaint and the Court’s December 22, 2025 Order Granting Defendant’s Motion to Dismiss (the “Order”) granted limited leave to amend only as to Plaintiff’s first, third, seventh, eighth, ninth, eleventh, twelfth, and fourteenth causes of action. See ECF No. 113. The Order did not authorize Plaintiff to add any new causes of action. *Id.*

1 Accordingly, Plaintiff's RICO cause of action should be dismissed with prejudice
2 for exceeding the limited scope of amendment granted by this Court's Order.

3 **2. Plaintiff's RICO Cause Of Action Fails As A Matter Of Law.**

4 Plaintiff's RICO cause of action is also substantively deficient insofar as Plaintiff
5 has not plead his RICO claim with sufficient particularity. Plaintiff alleges two fraud
6 based claims—"wire fraud" and "computer fraud"—as the basis for his RICO cause of
7 action. Rule 9(b)'s heightened pleading standard therefore governs Plaintiff's RICO
8 cause of action. *Khan v. Citimortgage Inc.*, 975 F. Supp. 2d 1127, 1139 n.2 (E.D. Cal.
9 2013) (Rule 9(b)'s "particularity requirement applies to state law causes of action"); *see*
10 *also Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004) (same).

11 In order to successfully allege a RICO cause of action, Plaintiff must allege facts
12 sufficient to show: "(1) conduct (2) of an enterprise (3) through a pattern (4) of
13 racketeering activity (known as 'predicate acts') (5) causing injury to plaintiff's
14 business or property." *United Bhd. Of Carpenters & Joiners of Am. v. Bldg. & Constr.*
15 *Trades Dep't AFL-CIO*, 770 F.3d 834, 837 (9th Cir. 2014) "[R]acketeering activity"
16 includes certain criminal acts indictable under state law or under several provisions of
17 Title 18 of the United States Code. *See 18 U.S.C. § 1961(1)*. A "pattern" of racketeering
18 activity also requires proof that the racketeering predicate acts are related and "that they
19 amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Northwestern*
20 *Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

21 To survive a motion to dismiss, fraud allegations must be accompanied by "the
22 who, what, when, where, and how" of the misconduct charged. *Vess v. Ciba-Geigy*
23 *Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003); *Cooper v. Pickett*, 137 F.3d 616, 627
24 (9th Cir. 1997). "The plaintiff must set forth what is false or misleading about a
25 statement, and why it is false." *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1548 (9th
26 Cir. 1994).

27 Here, Plaintiff has failed to satisfy any of the elements of fraud—let alone his
28 heightened pleading burden—because the Amended Complaint fails to articulate what

1 the fraud is that Rokoko supposedly perpetrated, who engaged in the fraud, when the
2 fraudulent activity occurred, why Rokoko’s conduct was anything but proper, or what
3 about the alleged misstatements were false. Under California law, “[f]ailure to plead
4 RICO predicate acts with particularity is a ‘fatal defect.’” *Alan Neuman Prods., Inc. v.*
5 *Albright*, 862 F.2d 1388, 1392 (9th Cir. 1989).

6 The Amended Complaint relies on generalized references to “false statements”
7 in web pages, terms, software, emails and the like, and then incorporates prior
8 allegations, but it does not specify the precise content, date, location, speaker, recipient,
9 or why each statement was false as to each predicate act and each defendant. Am.
10 Compl. 19:366-21:395. Such conclusory pleadings are insufficient under Rule 9(b). *See*
11 *e.g., Best v. Combs*, No. CV 24-9751 PA (SKx), 2024 LX 86092, at *7-8 (C.D. Cal.
12 Dec. 27, 2024) (“[a]bsent any specific facts to establish the alleged predicate acts,
13 Plaintiff fail[ed] to state a viable RICO claim.”). This Court previously advised
14 Plaintiff’s deficiency in pleading fraud-based claims in his original complaint, noting
15 that Rule 9(b) requires the “who, what, when, where, and how” of the alleged
16 misconduct and that conclusory allegations will not do. *See* Order (ECF No. 113) at
17 12:2-6 (*citing Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003)).
18 Plaintiff’s new RICO cause of action falls to the same defect: it does not plead the fraud
19 predicates with the particularity Rule 9(b) demands. *See Lancaster Cmty. Hosp. v.*
20 *Antelope Valley Hosp. Dist.*, 940 F.2d 397, 405 (9th Cir. 1991).

21 Because such allegations plainly do not satisfy Plaintiff’s high pleading standard,
22 Plaintiff’s Amended Complaint should be dismissed with prejudice as to his RICO
23 cause of action.

24 **G. Plaintiff’s Jury Demand Is Untimely And Should Be Stricken.**

25 Finally, Plaintiff’s Amended Complaint includes a jury demand that is untimely
26 and has been waived. Under Rule 38(b), a party must serve a written jury demand no
27 later than 14 days after the service of the last pleading directed to the triable issue;
28 otherwise, the party waives a jury trial. Fed. R. Civ. P. 38(d).

1 An amended pleading revives the right to demand a jury trial only if the
2 amendment raises new issues or changes the original issues. *Trixler Brokerage Co. v.*
3 *Ralston Purina Co.*, 505 F.2d 1045, 1050 (9th Cir. 1974) (a party having previously
4 waived its right to a jury trial is not entitled to one by an amended pleading that is
5 merely a more detailed statement of a previously filed claim). The mere assertion of the
6 same legal theories previously pleaded does not constitute the presentation of a new
7 **issue** on which a jury trial should be granted under Fed. R. Civ. P. 38(b), and thus would
8 not revive the pleader’s right to a jury trial. *Id.* “At a minimum then, plaintiff must allege
9 new issues of fact in order to revive his once-waived right to trial by jury.” *Clement v.*
10 *Am. Greetings Corp.*, 636 F. Supp. 1326, 1334 (S.D. Cal. 1986). “Moreover, he would
11 be entitled to a jury only as to those new factual issues.” *Id.*; *see also Lutz v. Glendale*
12 *Union High Sch.*, 403 F.3d 1061, 1064-1066 (9th Cir. 2005) (an amended pleading does
13 not revive a waived jury right unless it introduces new issues of fact, and even then the
14 jury right attaches only to the truly new issues).

15 Here, Plaintiff did not timely serve a jury demand and, on November 25, 2025,
16 the Court set a bench trial for March 9, 2027. Now, Plaintiff belatedly attempts to
17 demand a jury in the Amended Complaint. Because the Amended Complaint does not
18 present new factual issues that would revive a jury right, the Court should strike
19 Plaintiff’s jury demand as untimely. Alternatively, to the extent the Court were to find
20 any truly new factual issues pled in the Amended Complaint (and to the extent they are
21 not dismissed), any jury right should be limited solely to those new issues, if any, and
22 not to issues previously pled. *See Lutz*, 403 F.3d at 1064.

23 **H. Any Further Chance To Amend Would Be Futile.**

24 Dismissal without leave to amend is appropriate “when (1) the plaintiff has
25 already had opportunities to amend his complaint and (2) further amendment would be
26 futile.” *Patel v. Robinson*, 2020 U.S. Dist. LEXIS 17262, at *6 (C.D. Cal. Jan. 9, 2020).
27 This Amended Complaint is Plaintiff’s second chance to properly plead his causes of
28 action, yet he fails to do so again. The “[r]epeated failure to adequately amend signals

1 to the Court that any further amendments would be futile.” *Reichel v. Fundraise Up*
2 *Inc.*, 2025 U.S. Dist. LEXIS 181481, at *14 (C.D. Cal. Sept. 16, 2025); *Kleidman v.*
3 *Just. Audrey B. Collins*, 2022 U.S. Dist. LEXIS 248128, at *15 (C.D. Cal. Aug. 26,
4 2022) (“if... it is clear that a complaint cannot be cured by amendment, the Court may
5 dismiss without leave to amend.”); *Kauai Scuba Ctr., Inc. v. Padi Ams., Inc.*, 524 Fed.
6 Appx. 344, 347 (9th Cir. 2013) (“The District Court gave [Plaintiff] ample opportunity
7 to cure the defects in its pleadings after pointing them out. The second amended
8 complaint failed to do so. In light of [Plaintiff’s] allegations, further leave to amend
9 would have been futile.”). Accordingly, any future amendments would be futile.

10 **IV. CONCLUSION**

11 For the reasons stated herein, Rokoko respectfully requests that the Court grant
12 Rokoko’s Motion to Dismiss in its entirety without leave to amend.

14 DATED: January 27, 2026

REED SMITH LLP

16 By: /s/ Katherine J. Ellena
Katherine J. Ellena
Michael Galibois (*pro hac vice*)
Emily Graue (*pro hac vice*)
Valentino Gorospe IV

19 *Attorneys for Defendant*
Rokoko Electronics

CERTIFICATION OF MEET AND CONFER

I certify that the parties met and conferred to discuss the issues raised in the Motion and attempted in good faith to resolve the Motion in whole or in part on January 20, 2026.

DATED: January 27, 2026

/s/ Katherine J. Ellena
Katherine J. Ellena

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant Rokoko Electronics, certifies that this brief contains 6,159 words, which complies with the word limit of L.R. 11-6.2.

DATED: January 27, 2026

/s/ Katherine J. Ellena
Katherine J. Ellena