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5 Plaintiff In Pro Per,

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

MATTHEW R. WALSH

Plaintiff In Pro Per,

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]*

Hearing date: February 23, 2026
Hearing time: 1:30PM
Place: Dept. 5D

**OPPOSITION TO DEFENDANTS
MOTION TO DISMISS**

Filed concurrently with:
Walsh Decl. re: Original 2020 Contract
Walsh Decl. re: Falsified Evidence
Walsh Decl. re: Terms & Cond. RFA's
Walsh Decl. re: Estoppel & Preclusion

8

9

INTRODUCTION

10 Defendants motion fails from a number of issues:

11 **(First)** Defendant's fourth motion to dismiss is not a proper Rule 12(b)(6)

12 filing as they have introduced and relied upon evidence not within the four corners

13 of the Complaint. They attempted to side-skirt Rule 12 by filing an RJN with new
14 evidence not within the Complaint of which the source cannot be identified or
15 validated. Further, the evidence they are trying to introduce has been objected to
16 *before* in other filings and is in dispute. Therefore, **the Court must treat**
17 **Defendant’s motion under 12(d) as a Rule 56 motion which too will fail** as
18 Defendant’s themselves have expressly disputed the permissibility of the very
19 evidence their motion relies on during discovery. **(Second)** Defendants’ are
20 estopped from bringing this motion as for every dispute they bring forth, they prior
21 claimed is inapplicable to any cause, claim and defense of *any* party and; **(Third)**
22 Defendant’s motion wholly relies on fabricated terms & conditions and; **(Fourth)**
23 relies on manipulated and incomplete evidence designed to mislead the Court and;
24 **(Fifth)** It cited and relies strongly upon yet another AI-hallucinated authority
25 **(Sixth)** it largely ignores the operative pleading and record and; **(Eighth)** Rather
26 than test the legal sufficiency of the allegations, Defendants attempt to dispute
27 particularized facts, attack evidence, and rewrite the record -- conduct that is
28 improper for a Rule 12(b)(6) motion.

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SUMMARY OF MISCONDUCT

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DEFENDANTS MOTION TO DISMISS IS HIGHLY IMPROPER

[IMPROPER #1] FALSIFIED EVIDENCE: TERMS & CONDITIONS

1. The Defendant’s Motion to Dismiss fails for a number of reasons. **First and foremost**, once again the Defendants have not only swapped key evidence but also fabricated that evidence to support their alternate reality. In their prior motion to dismiss they too ignored the Complaint and substituted the terms & conditions -- which admit to their misconduct -- with an entirely different set of innocuous and inert ‘general terms’. These terms were in no way related to the specific product(s) or software in question and entirely unrelated to all claims. Defendant was notified many times, yet, refused to cure. Finally, Plaintiff filed a motion for sanctions for this precise issue (See Dkt #117, 117-7).
2. Here, Defendant does it *again* – post sanctions motion for the same -- to support their MTD by filing an RJN which they hand-added an “effective date” to confuse the Court and make it appear as though those terms were active during Plaintiff’s association as a customer. **These terms as provided to the Court have never existed outside of this Court.** Defendant should have to show cause and provide a verifiable online source with references this exact document, with that exact date. Plaintiff

72 has every version of their software from 2020 forward, so it would be of
73 great interest to be privy to the Defendants' response. (*see "Walsh Decl.*
74 *Fabricated Evidence"*)

75 3. This is not a mistake. It's a well-documented pattern. If they do not
76 manipulate the terms & conditions, they cannot defend their case.

77 4. Regardless of their attempts to alter reality, Defendant's statements suffer
78 an inescapable timeline problem:

79 a. **[2020]** Their own evidence admits Plaintiff purchased the
80 equipment in 2020 (Mot. Ex. 1-3). The 2020 terms Plaintiff was
81 bound to at that time were spoliated at the very onset of this action
82 (Dkt #117-12). Having destroyed all copies, Defendant refused to
83 produce them: [*"To the extent that Plaintiff contends that prior*
84 *versions of Rokoko's Terms and Conditions are relevant to the*
85 *case, it can seek such information from Rokoko in discovery."*].

86 However, in discovery, Defendant wholly refuses to produce them:
87 [*"Rokoko objects to the extent that this Request seeks information*
88 *that is neither relevant nor reasonably calculated to lead to the*
89 *discovery of admissible or relevant evidence."*]

90 b. **[2022]** Defendant issued a new agreement in 2022 to supersede the
91 2020 agreement. These terms stayed active until March 29, 2025.

92 The Defendant's cannot claim the post-March 29, 2025 terms they
93 have provided with their motion are the operative terms as they
94 themselves submitted the 2022 terms to the Court (Dkt #1-3, p.
95 372-383). Both the 2020 and 2022-2025 terms also gave
96 Defendants no collection or rights of any I.P. and in fact,
97 disclaimed it (*while they secretly collected and used that I.P.*).

98 c. Most problematically for the Defendant, Plaintiff finally acquired
99 the spoliated 2020 terms on January 21, 2026. Those terms defeat
100 every one of Defendant's contentions, statements and so called
101 'facts' placed before the Court. (*see Request for Judicial Notice*
102 *Dkt #139*)

103 d. [2024] As the Complaint, evidence and Defendants' own written
104 communications make clear – Defendant's equipment was
105 destroyed in 2024.

106 i. **Absent the ability to travel through time, he could never**
107 **assent to any future terms because he had no equipment**
108 **and therefore had no possible use of the product(s) /**
109 **service(s).**

110 ii. Further, the 2020 terms explicitly state they supercede all
111 terms – *forever* – **even later terms**. Plaintiff remains bound
112 to only those terms by Defendant’s own design.

113 e. **[2025]** The terms and conditions which were released on March
114 30, 2025; are the only terms which give Defendants’ any rights to
115 any intellectual property – forced upon users’ retroactively and
116 without assent. Defendants’ are entirely aware of this paradox, as
117 they submitted the 2022 and 2025 terms in the Notice of Removal
118 (Dkt #1-3, p. 385-396).

119 f. **In simple summation: (2020)** Plaintiff buys and agrees to the
120 terms which disclaim any access or data collection and which
121 expressly bind him against all future terms forever; **(2022)** new
122 terms are instituted still contain no rights to any data or access;
123 **(2024)** Plaintiff’s hardware is destroyed, no use occurs beyond
124 about September **(March 29, 2025)** the 2022 terms are still in
125 effect for all customers **(March 30, 2025)** Defendant issues
126 retroactive IP-rights granting terms without any assent to all users.

127 **[IMPROPER #2] MISREPRESENTED EVIDENCE FROM NINTENDO**

128 5. To prevail on their Motion to Dismiss under ‘Tortious Interference’ the
129 Defendant provides the Court misrepresented evidence in stating: “[‘The

130 *Nintendo Developer Portal is free for anyone to join and release date*
131 *and price are set by the developer. See*
132 *<https://developer.nintendo.com/faq>. The same is true for Sony's*
133 *Development Portal. See [https://developer.sony.com/cellular-iot/how-to-](https://developer.sony.com/cellular-iot/how-to-register)*
134 *register. Signing up voluntarily for a website does not demonstrate an*
135 *economic relationship”]. Defendant entirely ignores the inconvenient*
136 *part of Nintendo's website to manufacture a desired legal outcome. Once*
137 *you choose an option of what type of developer you are, it immediately*
138 *states: [“**You do not belong to an established business/company and***
139 ***would like to present to Nintendo a project with commercial intent:***

140 6. *We appreciate your interest in Nintendo and our highly acclaimed line of*
141 *videogame products. To us, it's a sign of recognition and your vote of*
142 *confidence in the Nintendo name. We regret that we are unable to go*
143 *forward with your proposal. As you might imagine, we receive numerous*
144 *requests. While we would like to be able to accommodate them all, **this is***
145 ***simply not possible, however deserving the project.** We wish you all the*
146 *best in your future endeavours.”] (see Ex. 9). Had Defendant provided*
147 *the Court with *this text*, their Motion to Dismiss for the first cause of*
148 *action would fail as it clearly signals that Plaintiff's game(s) were*
149 *submitted, vetted, approved and continued through the licensing*

150 processes to release. This inconvenient part of their evidence defeats
151 speculation and lack of a third-party contract.

152 **7. CONTRACTS ARE NOT SPECULATIVE AND EXIST,**
153 **PLAINTIFF IS SIMPLY BARRED FROM SHARING**

154 Plaintiff is contractually barred from sharing the Confidential Nintendo
155 Switch agreement. However, the SEC has made a prior (and almost
156 identically similar) agreement available at:

157 [https://www.sec.gov/Archives/edgar/data/718877/000110465905027535/
158 a05-8078_1ex10d42.htm](https://www.sec.gov/Archives/edgar/data/718877/000110465905027535/a05-8078_1ex10d42.htm) of which Plaintiff requested Judicial Notice to

159 be taken:

160
161 Defendant's conjecture that anyone can sign up free and make and sell games
162 through Nintendo is extremely unfounded and contrary to every agreement
163 Nintendo has ever provided:
164

165 *LICENSEE desires a license to use highly proprietary programming*
166 *specifications, development tools, trademarks and other valuable intellectual*
167 *property rights of NOA and its parent company, Nintendo Co., Ltd.*
168 *(collectively "Nintendo"), to develop, have manufactured, advertise, market*
169 *and sell video game software for play on the Nintendo DS system."*
170

171 *Game(s)" means the Nintendo DS version of an interactive **video game***
172 *program, or other applications **approved by Nintendo** (including source and*
173 *object/binary code) developed for the Nintendo DS system.*
174

175 *"NDA" means the non-disclosure agreement providing for the protection of*
176 *Confidential Information related to the Nintendo DS system previously*
177 *entered into between NOA and LICENSEE.*

178
179 *Limited License Grant.* For the Term and for the Territory, NOA grants to
180 *LICENSEE* a nonexclusive, nontransferable, limited license to use the
181 intellectual Property Rights to develop Games for manufacture, advertising,
182 marketing and sale as Licensed Products, subject to the terms and
183 conditions of this Agreement. Except as permitted under a separate written
184 authorization from Nintendo, *LICENSEE* shall not use the Intellectual
185 Property Rights for any other purpose.

186
187 *Development and Sale of the Games.* *LICENSEE* may develop Games and
188 have manufactured, advertise, market and sell Licensed Products for play on
189 the Nintendo DS system only in accordance with this Agreement.

190
191 Defendants continued conjectures regarding a zero-friction, zero-contract licensing
192 ability through Nintendo is similarly unfounded. In fact, Nintendo is involved in
193 the approval or disapproval for every step of the process, even something as simple
194 and personal as the games' artwork:

195
196 4.5 *Submission of Artwork.* Upon submission of a completed Game to
197 NOA, *LICENSEE* shall prepare and submit to NOA the Artwork for the
198 proposed Licensed Product. Within seven (7) business days of receipt, NOA
199 shall approve or disapprove the Artwork. If any Artwork is disapproved,
200 NOA shall specify in writing the reasons for such disapproval and state what
201 corrections or improvements are necessary. After making the necessary
202 corrections or improvements, *LICENSEE* shall submit revised Artwork to
203 NOA for approval. NOA shall not unreasonably withhold or delay its
204 approval of any Artwork. The approval of the Artwork by NOA development
205 and quality of the Artwork or in any way create any warranty for the
206 Artwork or any Licensed Product by NOA.

207
208 Much to Defendant's conjecture, Plaintiff in fact is **barred from sharing the**
209 **agreement(s)**

210
211 *Definition.* "Confidential Information" means information provided to
212 *LICENSEE* by Nintendo or any third party working with Nintendo relating
213 to the hardware and software for the Nintendo DS system or the
214 Development Tools, including, but not limited to, (a) all current or future
215 information, know-how, techniques, methods, information, tools, emulator
216 hardware or software, software development specifications and/or trade

217 *secrets, (b) any patents or patent applications, (c) any business, marketing*
218 *or sales data or information, and (d) any other information or data relating*
219 *to development, design, operation, manufacturing, marketing or*
220 *sales. Confidential Information shall include all confidential information*
221 *disclosed, whether in writing, orally, visually, or in the form of drawings,*
222 *technical manifest, in any form, the above listed information. Confidential*
223 *Information shall not include (i) data and information that was in the public*
224 *domain prior to LICENSEE's receipt of the same hereunder, or that*
225 *subsequently becomes part of the public domain by publication or otherwise,*
226 *except by LICENSEE's wrongful act or omission, (ii) data and information*
227 *that LICENSEE can demonstrate, through written records kept in the*
228 *ordinary course of business, was in its possession without restriction on use*
229 *or disclosure, prior to its receipt of the same hereunder and was not*
230 *acquired directly or indirectly from Nintendo under an obligation of*
231 *confidentiality that is still in force, and (iii) data and information that*
232 *LICENSEE can show was received by it from a third party who did not*
233 *acquire the same directly or indirectly from Nintendo and to whom*
234 *LICENSEE has no obligation of confidentiality.*
235
236

237 8. Lastly, 'signing up' (to whatever degree the Defendants' limited
238 knowledge on the topic allows) may be free – however, at a minimum
239 mutual party copyright/licensing agreements, releases and payment
240 agreements obviously must exist. Further, Nintendo takes 30% for life.
241 That is hardly 'free' and clearly requires a contract. No reasonable person
242 could think otherwise.

243 **[IMPROPER #3] FALSE STATEMENTS**

244 9. The motion is fraught with materially false statements, which Defendant
245 knows or should know is false simply by reviewing the material. In fact,

246 it was discussed during the 7-3 and Counsel stated they'd "look into it".
247 Rather than list each false statement, Plaintiff provides the simplest to
248 illustrate:

- 249 a. **"Plaintiff's Amended Complaint again fails to show that**
250 **Rokoko had knowledge of the relationships"**. The Amended
251 Complaint and it's evidence (Dkt #114-1, Ex's 4,5,7) clearly show
252 instant messages between the Defendant and Plaintiff where they
253 asked about those Contracts, they were listed, and based contingent
254 on them – Defendant offered "*the largest discount ever*".

255 **[IMPROPER #4] AI-GENERATED CASELAW**

256 10. Throughout these proceedings, and as detailed in the sanctions motion
257 (Dkt #117), Defendant continues to rely on AI-halloucinated caselaw.
258 Defendants Motion to Dismiss (Dkt #127) is no exception. Defendant
259 states: [*"A general firmware update does not show Rokoko's intent to*
260 *interfere with or disrupt Plaintiff's contractual relationships. Go Daddy*
261 *Operating Co., LLC v. Ghaznavi, 2018 WL 1091257, at *9 (N.D. Cal.*
262 *Feb. 28, 2018)."]]. However, that case has nothing to do with firmware,
263 or software updates of any kind. **First**, Godaddy's products are web-
264 based digital products and do not utilize firmware in any way. Firmware
265 is the operating software that custom, small form-factor hardware runs*

266 on. GoDaddy is a website domain reseller. They don't make hardware or
267 devices, therefore – no firmware either. **Second**, that case is a solely
268 trademark infringement case in which Ghaznavi had cybersquatted on
269 Domains and then used Godaddy's logo and name to make the the public
270 believe those domains were under the responsibility, care and trusted
271 name of Godaddy.

272

273

274 **CONVERSION TO A RULE 56 MOTION**

275

276 **DEFENDANTS MOTION IS NOT A PROPER 12(b)(6), IT IS A RULE 56**

277 *11. Under Rule 12(d), [“[i]f, on a motion under Rule 12(b)(6) or 12(c),*
278 *matters outside the pleadings are presented to and not excluded by the*
279 *court, the motion must be treated as one for summary judgment under*
280 *Rule 56. All parties must be given a reasonable opportunity to present all*
281 *the material that is pertinent to the motion.”] Fed. R. Civ. P. 12(d).*

282 Reiterated further in *(Geinosky v. City of Chicago, 675 F.3d 743, 745 n.1*
283 *(7th Cir. 2012))* the Seventh Circuit noted that a Rule 12(b)(6) motion
284 can be based only on the complaint itself, including documents attached
285 to, or referred to in, the complaint, and information that is properly

286 subject to judicial notice. *Id.* If the defendant relies on **any other**
287 materials in support of her motion, and they are not excluded by the
288 court, then the motion must be treated as one for summary judgment
289 under Rule 56. *See id.*; *Fed. R. Civ. P. 12(d)*.

290 *12.* That is exactly what Defendants have done here. Defendants rely on
291 extrinsic materials submitted at Dkt. #127-1 -- including billing system
292 screenshots, third-party website content, and disputed versions of
293 purported Terms & Conditions -- to support factual assertions outside the
294 four corners of the Complaint. Those materials are not proper subjects of
295 judicial notice, have been in dispute since the Complaint was filed and
296 beyond and form the factual backbone of the Motion itself. Because
297 Defendants chose to rely on those materials, the Motion cannot be treated
298 as a Rule 12(b)(6) motion and must be analyzed, if at all, under Rule 56.
299

300 **DEFENDANTS MOTION FAILS DUE TO EQUITABLE ESTOPPEL AND**
301 **PRECLUSION OF EVIDENCE**

302 ***13.*** **DEFENDANTS DEFEATED THEIR OWN MOTION** - As the Court
303 must now treat the motion as a Rule 56, it fails wholly under the
304 following factual and evidentiary standards. The Defendant only now
305 provides a contradictory position which was made in discovery.

306 Defendant's cannot have it both ways: irrelevant to any claim, waiver of
307 defense in discovery then later dispositive in a Rule 56 or Rule 12(b)(6).

308 14. An accounting of Defendants assertions which are estopped are collapsed
309 in the declaration ("*Walsh Decl. Equitable Estoppel and Preclusion*")

310 **15. DEFENDANTS ARE ESTOPPED**

311 16. Plaintiff, appearing pro se, reasonably relied on Defendants
312 representations concerning relevance in discovery and structured his
313 litigation conduct accordingly. This includes making strategic and
314 procedural choices he otherwise would not have made or been forced to
315 make, resulting in multiple instances of detriment including expending
316 enormous time and he finite resources.

317 17. Defendants, who were represented by counsel, are therefore equitably
318 estopped from reversing those positions. [*"California law particularly*
319 *disfavors estoppels where the party attempting to raise the estoppel is*
320 *represented by an attorney at law.... One who acts with full knowledge of*
321 *plain provisions of law and their probable effect on facts within his or*
322 *her knowledge, especially where represented by counsel, may claim*
323 *neither ignorance of the true facts nor detrimental reliance on the*
324 *conduct of the person to be estopped, two of the essential elements of*
325 *equitable estoppel."*] (*Rustico v. Intuitive Surgical, Inc., 424 F. Supp. 3d*

326 720 (N.D. Cal. 2019), *aff'd*, 993 F.3d 1085 (9th Cir. 2021)). [*“Equitable*
327 *estoppel is “not a punitive notion, but rather a remedial judicial doctrine*
328 *employed to insure fairness, prevent injustice, and do equity.”*]
329 (*Leasequip, Inc. v. Dapeer*, 103 Cal. App. 4th 394, 403, 126 Cal.Rptr.2d
330 782 (2002))

331 18. Every ‘fact’ and ‘evidence’ they assert in their motion they have prior
332 stated: *“not relevant to a claim or defense of any party”* is a clear
333 violation of Rule 37(a)(4) and expressly closed the door at the time of
334 representation. Defendant committed themselves to a refusal-based
335 litigation position going forward, triggering estoppel. [*“The affirmative*
336 *acts that trigger equitable estoppel under California law “often take the*
337 *form of a promise on the part of the defendant concerning future*
338 *performance.”*] (*Hauser v. Josephthal & Co., Inc.*, No. B189843, 2007 WL
339 662469, at *2 (Cal. App. Mar. 6, 2007)). Defendants’ expressly
340 disclaimed defense in only those select instances and therefore have
341 waived defenses against estoppel. (*Ashou v. Liberty Mutual Fire Ins. Co.*,
342 138 Cal. App. 4th 748, 41 Cal.Rptr.3d 819 (2006))

343 19. Defendants had a Rule 26 duty to disclose, and their waiver and silence
344 equitably estop them from later relying on inaction where prior conduct

345 created a duty to speak. *Prudential Home Mortgage Co. v. Superior*
346 *Court*, 66 Cal.App.4th 1236, 1252, 78 Cal.Rptr.2d 566 (1998).

347 20. The Defendants' wholly declared bankruptcy on 'relevance' and 'any
348 parties defense' -- and then later try to cash 'relevance' as a check to pay
349 for their defense. Both cannot exist.

350 21. Therefore based on (a) Defendant's own express statements including (a)
351 the nullification of 'defenses of any party' and; (b) Defendant's
352 declaration that they are unrelated to any claims. **Defendant's motion is**
353 **wholly estopped, has no argument remaining and fails substantively.**
354

355
356 **DEFENDANTS OWN CONTRACT AND THE PLEADINGS DEFEATS**

357 **ALL DISPOSITIVE ARGUMENTS AND CLAIMS**
358

359 22. "Defendant's Motion to Dismiss rises or falls on the assumption that its
360 License Agreement authorized the challenged conduct. Plaintiff has
361 plausibly alleged -- using Defendant's own 2020 Agreement -- that it not
362 only had zero authorization, but expressly forbade any access by
363 Defendants' (*see "Walsh Decl. Original 2020 Contract Terms"*). That
364 alone precludes dispositive relief for all claims under Rule 12(b)(6).

365 **23. Each one of Defendant’s dispositive arguments fail.** Plaintiff has
366 rebutted each of their contentions, there is no theory left that can be
367 resolved without ‘choosing facts’, an improper move at 12(b) as the
368 Court must accept Plaintiffs’ as operative and factual.

369
370 **24. “No valid economic relationships”**

371 a. (Am. Compl. Ex. 1-3, 6, 23), along with Nintendo and Sony
372 SKU’s (Am. Compl. p.7, ¶ 1), and a near-identical Nintendo
373 contract to the one Plaintiff is barred from sharing (RJN Dkt #139)
374 prove otherwise.

375 **25. “Whether platform access constitutes an economic relationship is fact-**
376 **intensive”, “Nintendo/Sony portals are free signups”**

377 a. Plaintiff points to the Defendants’ mischaracterization of
378 Nintendo’s website and further provides a near-identical contract
379 Nintendo issued for it’s predecessor to the Switch. Plaintiff signed
380 a similar agreement. (see Dkt #139, Ex. 2)

381 **26. “Rokoko had no knowledge of relationships”**

382 a. (Am. Compl. p.8, ¶ 4), (Am. Compl. Ex. 7) shows literal text
383 messages from the Defendant in which they asked about the
384 contracts, then issued “the largest discount ever” based on it. The

385 equipment was mailed to Plaintiff not by a nameless customer
386 service agent, but from the COO himself Mikkel Lucas Overby
387 (Orig. Compl. 90-93)

388 **27. “No intent to harm—just a firmware update”**

389 a. Contract (§ 1.8) declares all services and updates are “elective”,
390 yet the firmware was forced. Additionally Defendant’s own
391 developer notes declare their knowledge that it breaks “older”
392 glove and hub compatibility was written prior to the release of the
393 firmware and then knowingly released, destroying Plaintiff’s older
394 equipment. (Am. Compl. p.5 ¶ 6 & p.8 ¶ 4, 5), (Am. Compl. Ex.
395 14)

396 **28. “No independently wrongful act”**

397 a. Requires a legal conclusion. However, the contract (§ 2.1.1)
398 specifically disclaims and prohibits unauthorized access,
399 harvesting, cloud use and states it is specifically a contractual
400 breach. Illegality alleged is sufficient at the pleading stage.

401 **29. “Damages are speculative”**

402 a. Requires a legal conclusion. Contract (§3.1.2) recognizes
403 commercial value of outputs. Plausibility and damages don’t
404 require proof at 12(b)(6).

405 **30. “Animations aren’t trade secrets”, “Trade secrets not pled with**
406 **specificity”**

407 a. Defendant’s Contract (§3) disagrees wholly in opposition and
408 defines it themselves:

409 i. It specifically defines Plaintiff as Licensee;

410 ii. It defines Plaintiff’s animations as ‘Supplemental
411 Materials’: [*“Supplemental Materials include, without
412 limitation, (a) content, such as ... settings and animations”*]

413 iii. It then states: [*“The [structure and organization of
414 Software] included in the ROKOKO Materials, any source
415 code or [similar materials relating to such Software] are
416 valuable trade secrets... may be used only internally and
417 only in conjunction with and for Licensee’s own authorized
418 internal use”*]

419 **31. “Public disclosure destroyed secrecy”**

420 a. (Am. Compl. P. 10, ¶ 10) specifically states that the animation data
421 has *never been disclosed*. The Court must accept it as true at 12(b).

422 Disclosure scope is factual and requires a legal conclusion.

423 **32. “Uploading to platform waived secrecy”, “Plaintiff voluntarily**
424 **uploaded”, “No improper means”**

- 425 a. (Am. Compl. p.9, ¶ 8) specifically details with evidence that no
426 such voluntary events took place. The Court must accept it as true
427 at 12(b). Contract bars defendant from any collection (§2.1.1) and
428 supersedes all future agreements wholly forever (§8.1, 8.3, 9.13).
- 429 b. Plaintiff plead from the beginning: the intellectual property was
430 covertly stolen from him. A Defendant cannot steal trade secrets,
431 then say “*Because I stole them, they aren’t a secret anymore*” as a
432 legal defense. That is wholly unconscionable.

433 ***33. “License authorizes all use”, “License is an affirmative defense”***

- 434 a. No terms have ever existed from 2020 through all of 2024... From
435 when Plaintiff became a customer, to after he stopped entirely...
436 Which granted *any license or use of any intellectual property* to
437 the Defendants. Further, the 2020 Contract disclaims all use and
438 access for Defendant (§2.1.1, 2.1.4), bars Defendant from
439 distributing or disclosing to third parties (§3) – and establishes
440 those claims survive forever (§8.3, 9.13).

441 ***34. “No copyright registration at filing”***

- 442 a. Copyright attaches at time of creation 17 U.S.C. Section 102
443 b. 17 U.S. Code § 412 states legal remedy is unaffected and Plaintiff
444 is not time-barred if the “first publication” (sale to a consumer) has

445 never occurred, which it has not. Further, § 412 provides an
446 exception “or 1 month after the copyright owner has learned of the
447 infringement”. Plaintiff learned of the infringement on or about
448 April 17, he filed on or about May 7. Lastly, Plaintiff has plead
449 through image and video evidence that infringement is new and
450 ongoing, post-registration date; entitling him to awards of statutory
451 damages for all new infringements. (Am. Compl. p.13, ¶ 18) (Am.
452 Compl. Ex. 32-34, 47-52, 50, 55, 56). Regardless, this simply
453 limits remedies, it does not qualify dismissal.

454 **35. “No copying alleged”**

- 455 a. Simply incorrect. There is an entire cause of action plead for
456 misappropriation which in this case is the literal act of copying
457 (Am. Compl. p.13, ¶ 18). Video evidence of the copying was
458 presented (Am. Compl. Ex. 34)

459 **36. “DMCA fails with copyright claim”, “No intent under DMCA”, “No
460 Distribution”**

- 461 a. A claim for Copyright Management Information (CMI) stripping
462 under DMCA §1202(b) does not fail because the work is
463 unregistered, it creates a separate, statutory right that exists
464 independently of the underlying copyright

465 registration. Additionally, CMI stripping is still ongoing post-
466 registration. (Am. Compl. p.6, ¶ 9), (Am. Compl. Ex 32, 34).

467 b. Scierter plausibly inferred, Defendant admitted to doing so
468 (Compl. Ex. 44, 52)

469 c. DMCA §1202 covers removal + concealment, not just distribution

470 **37. “RICO exceeds leave to amend”**

471 a. The Court placed no prohibitions on adding claims. Further, in the
472 original Complaint, Plaintiff plead that he will amend as the facts
473 become clearer (Orig. Compl. p.64, ¶ 96, ¶ 98): [*“Plaintiff reserves*
474 *the right to assert a claim for civil RICO under 18 USC 1962 upon*
475 *the discovery of additional evidence supporting such a claim of*
476 *racketeering activity”*]. Defendant and the Court had sufficient
477 notice.

478 **38. “RICO not pled with particularity”, “No enterprise”**

479 a. RICO is plead with the precise requirements compliant with Rule
480 9(b) and as found in other civil RICO cases: Two or more
481 predicate acts grounded in contracts, updates, transmissions.
482 Particularity disputes are factual, not dispositive.

483 b. Enterprise plausibly alleged through Defendant’s own statements,
484 third party sales (Ex. 48-52) and investor materials (Ex. 37) who

485 contractually engaged and purchased equity stake in exchange for
486 the ability to also engage in misappropriation and infringement.

487 **39. “Jury demand waived”**

- 488 a. New factual allegations revive jury right. The Court already
489 accepted the designation and updated ECF.

491
492 **TERMINATING SANCTIONS WARRANTED**

493
494 **FABRICATING EVIDENCE WARRANTS TERMINATION**

- 495 *1. This is not the first, second or third time Defendant’s have filed a Motion*
496 *to Dismiss containing falsified evidence, it is the fourth. It can no longer*
497 *be considered anything but bad faith. [“Dismissal is also appropriate*
498 *when the sanctionable conduct is willful or done in bad faith. Id.*
499 *“Dismissal is particularly warranted where one party submits falsified*
500 *evidence” because the “submission of falsified evidence substantially*
501 *prejudices an opposing party by casting doubt on the veracity of all the*
502 *culpable party's submissions throughout [the] litigation.” Pope v. Fed.*
503 *Express Corp., 138 F.R.D. 675, 683 (W.D. Mo. 1990) (aff'd in part,*
504 *vacated on other grounds, 974 F.2d 982 (8th Cir. 1992)).”]*

505 2. Defendants were always aware that the evidence in question was
506 fabricated as it was mentioned in multiple 7-3's and in multiple filings
507 upon the record (Dkt's # 57, 80, 82, 85, 89, 93, 117, 117-5) and further
508 that they are facing a sanctions motion over this very evidence, and this
509 very type of motion (Dkt's #117, 117-5) [*"To establish a fabrication of*
510 *evidence claim, a party must allege that the defendants **knew** the*
511 *evidence was fabricated, as well as "that the fabricated evidence was so*
512 *significant that it could have affected the outcome of the ... case."]* Ricci,
513 2023 WL 4686025, at *9 (quoting Black v. Montgomery Cnty., 835 F.3d
514 358, 369 (3d Cir. 2016)) (citations omitted)). And here, the Defendants'
515 rely on those false statements and false evidence to do just that – dismiss
516 Plaintiff's intellectual property claim: [*"Rokoko's License Agreement,*
517 *which Plaintiff relies upon at length in his Amended Complaint, expressly*
518 *authorizes Rokoko to use and collect any User Content, which Rokoko*
519 *confirms will never be distributed in its original form. The existence of a*
520 *license is an affirmative defense to a copyright infringement claim""].*

521 This simply just isn't true and Defendant knows it isn't. As demonstrated
522 in the 2020 terms (see RJN Dkt #139) and even the 2022-2025 terms they
523 themselves submitted (Dkt #1-3, p. 372-383). Neither agreement contain
524 any such license; and in fact, the 2020 version disclaims it wholly.

525 Defendant’s refuse to admit or deny anything regarding the terms &
526 conditions due to this adverse knowledge. (*see “Walsh Decl. re: Terms
527 and Conditions RFA”*).

528 3. Defendant’s fabricated evidence because they knew the 2022-March 29,
529 2025 version undercuts their position wholly. By manipulating the date
530 on the March 30 retroactive terms, it appears as that version was active
531 during Plaintiff’s usage. [*“Additionally, when a party submits falsified
532 evidence, the “prejudiced party is forced either to attempt independent
533 corroboration of each submission, at considerable expense of time and
534 money, or to accept the real possibility that those discovery documents
535 submitted by the opposing party are inaccurate.” Id. Moreover,
536 excluding the fabricated evidence is not always enough to deter discovery
537 misconduct because “[l]itigants would infer that they have everything to
538 gain, and nothing to lose, if manufactured evidence merely is excluded
539 while their lawsuit continues.” Id.”]* quoting *Martin v. Domino's Pizza.*,
540 No. 222CV00784GMNDJA, 2023 WL 7461882, at *3 (D. Nev. Nov. 9,
541 2023)

542
543 **FABRICTAED CASELAW WARRANTS TERMINATION**

- 544 4. Defendants have used AI-hallucinated caselaw about 38 times that
545 Plaintiff has discovered (Dkt 's # 23-1, 43, 47, 75 ,76, 77, 78, 80-4, 99,
546 117- 5). Despite repeatedly requesting that Plaintiff withdraw the filings
547 and threatening to oppose and file for Rule 11 sanctions (Dkt #73, 86,
548 117. Defendant never once opposed, nor filed for sanctions. They
549 acquiesced because it's true:
- 550 5. In just a single instance, a Rule 11 threat letter was sent stating: [*“Even a*
551 *cursory review of the authorities cited by Rokoko, which are enclosed*
552 *herewith, demonstrate that your Request for Judicial Notice, which you*
553 *signed under penalty of perjury, is meritless. We therefore demand that*
554 *you withdraw your Request for Judicial Notice”*]. It was never opposed.
555 Those LEXIS files were then taken and read and analyzed forensically.
- 556 6. Afterwards, Plaintiff brought a motion for sanctions which used their
557 own LEXIS pdf documents and the forensic analyzations of the same
558 (Dkt #84-4) as evidence against them.
- 559 7. Defendant still continues today submitting false authorities. [*“See*
560 *Wadsworth v. Walmart Inc., 348 F.R.D. 489, 497 (D. Wyo. 2025) (“It*
561 *is ... well-known in the legal community that AI resources generate fake*
562 *cases.”)*]. *We also suspected that the two misattributions were also*
563 *produced by the use of a GenAI tool. Such fabricated cases and*

564 *misattributions are often referred to as “AI hallucinations.” See id. at*
565 *493 (“A hallucination occurs when an AI database generates fake*
566 *sources of information.” (citing What are AI Hallucinations?, Google*
567 *Cloud, <https://cloud.google.com/discover/what-are-ai-hallucinations>*
568 *[<https://perma.cc/EJS8-CFMX>]))” and further “Moore’s citation of*
569 *nonexistent cases and her misrepresentation of at least one other case*
570 *has impaired judicial efficiency and amounts to a failure to comply with*
571 *... requirement[s] that a...brief cite[s] supporting authority. See Grant v.*
572 *City of Long Beach, 96 F.4th 1255, 1257 (9th Cir. 2024) (striking brief*
573 *and dismissing appeal because of similar failures to comply with Rule*
574 *28(a)(8)(A)). Fabricating case citations and clearly misrepresenting*
575 *what a case stands for are the antithesis of citing to supporting*
576 *authority.”] quoting Moore v. City of Del City, No. 25-6002, 2025 WL*
577 *3471341, at *2 (10th Cir. Dec. 3, 2025)*

578 8. [***“His citations to non-existent cases and violations of various rules and***
579 ***orders do in fact prejudice [Plaintiff]. [Defendants] noncompliance has***
580 ***stalled proceedings, wasted the Court’s time, cost [Plaintiff] money, and***
581 ***impeded the parties from having their motions adjudicated on the merits.***
582 ***See Ho v. Warren, No. 8:21-cv-2621, 2021 WL 5494374, at *3 (M.D.***
583 ***Fla. Nov. 23, 2021)”]* quoting (*Williamson v. Transunion LLC, No. 3:24-***

584 *CV-43-WWB-PDB, 2025 WL 2443063, at *6 (M.D. Fla. Aug. 5, 2025))*

585 Courts routinely terminate the offending party and refer Counsel to the
586 bar where knowledge or intent are present.

587
588 **DEFENDANTS REQUEST TO DISMISS WITH PREJUDICE AFTER ONE**

589 **AMENDMENT IS MOOT**

590 9. A defendant asking for dismissal with prejudice while simultaneously
591 poisoning the evidentiary well is contrary to every law and principle. [*“a*
592 *well-pleaded complaint may proceed even if it strikes a savvy judge that*
593 *actual proof of those facts is improbable” ... “The need at the pleading*
594 *stage for allegations plausibly suggesting (not merely consistent with)*
595 *agreement reflects the threshold requirement of Rule 8(a)(2) that the*
596 *“plain statement” possess enough heft to “sho[w] that the pleader is*
597 *entitled to relief.”]* (Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557, 127
598 S. Ct. 1955, 1966, 167 L. Ed. 2d 929 (2007). [*“the accepted rule that a*
599 *complaint should not be dismissed for failure to state a claim unless it*
600 *appears beyond doubt that the plaintiff can prove no set of facts in*
601 *support of his claim which would entitle him to relief.”]* 355 U.S., at 45–
602 46, 78 S.Ct. 99. To truly satisfy beyond doubt is a high bar. [*“The*
603 *determination of whether a complaint satisfies the plausibility standard*

604 *is a “context-specific task that requires the reviewing court to draw on*
605 *its judicial experience and common sense.”]* Id. at 679. [*“A court is*
606 *generally limited to the pleadings and must construe all “factual*
607 *allegations set forth in the complaint . . . as true and . . . in the light most*
608 *favorable”]* to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668,
609 679 (9th Cir. 2001). Further, FRCP 15(a) requires Courts to “freely give
610 leave” to amend pleadings “when justice so requires”. Cases in this
611 district have entertained beyond even the seventh amended Complaint in
612 no less than 25 matters (*see Sols. for Utilities, Inc. v. California Pub.*
613 *Utilities Comm'n, No. 2:11-CV-04975-JWH-JCG, 2023 WL 2504752*
614 *(C.D. Cal. Mar. 13, 2023)*, *Jonathan King Speaks v. Det. K. Bertsch, et*
615 *al. Jonathan King Speaks, No. 2:24-CV-08160-VBF (DTB), 2025 WL*
616 *3691944, at *1 (C.D. Cal. Nov. 12, 2025)*)

618

619 **CONCLUSION**

620 Plaintiff cannot meaningfully litigate merits when the foundation itself is fictional.
621 There is nothing within the Defendants’ motion to substantially oppose except the
622 sheer existence of the document itself.

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PRAYER FOR RELIEF

- ORDER Defendant’s Rule 12(b)(6) motion to be converted as a Rule 56 pursuant to Rule 12(d).
 - In the event the Court applies Rule 56, Plaintiff requests that both parties be ordered to submit any supporting evidence and statements within ten (10) days.
- ORDER Defendants to show cause why terminating sanctions should not issue for manipulating and submitting inauthentic evidence, repeatedly relying on AI-fabricated caselaw, and failing to comply with the Local Rules.

In the alternative, Plaintiff requests that the Court:

- DENY Defendant’s fourth Motion to Dismiss **with prejudice.**
- ORDER Defendants’ to answer the Complaint within 30 days.
ORDER Defendants to show cause why terminating sanctions should not issue for manipulating and submitting inauthentic evidence, repeatedly relying on AI-fabricated caselaw, and failing to comply with the Local Rules.

644 I declare under penalty of perjury under the laws of the United States of America
645 that the foregoing is true and correct.

646

647 Dated this January 27, 2026, in Santa Clarita, California.

648



649

Matthew R. Walsh
Plaintiff In Pro Per

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CERTIFICATE OF COMPLIANCE

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655

656 The undersigned, counsel of record for Plaintiff appearing in pro per, certifies that
657 this brief contains 5,670 words, which complies with the word limit of L.R. 11-6.2.

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