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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' REPLY IN SUPPORT OF MOTON TO DISMISS AMENDED COMPLAINT

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

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

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Defendant Rokoko Electronics ("Rokoko") submits this Reply in support of its Motion to Dismiss Plaintiff Matthew R. Walsh's ("Plaintiff") Amended Complaint and to respond to arguments in Plaintiff's Opposition Brief ("Opposition") (ECF No. 140).

I. INTRODUCTION

Plaintiff's Opposition fails to address the fundamental legal deficiencies in the Amended Complaint identified by Rokoko's Motion to Dismiss ("Motion"). Rather than demonstrating that the Amended Complaint states viable claims, Plaintiff resorts to attacks on the attachments to Rokoko's Request for Judicial Notice, raises procedural objections that lack merit, and makes inflammatory accusations without legal support. Plaintiff's Opposition does not cure the pleading failures identified in Rokoko's Motion and confirms that dismissal is warranted.

Plaintiff has not demonstrated the Amended Complaint sufficiently pleads tortious interference, misappropriation of intellectual property, copyright infringement, DMCA violations, or RICO. Accordingly, Rokoko's Motion should be granted and Plaintiff's Amended Complaint should be dismissed in full.

II. ARGUMENT

A. Rokoko's Motion To Dismiss Falls Squarely Within Rule 12(b)(6).

Rokoko's Motion is properly brought under Fed. R. Civ. P. 12(b)(6). Plaintiff's assertion that Rokoko's Motion should be converted to a motion for summary judgment under Fed. R. Civ. P. 56 because it relies on "extrinsic materials" is unfounded. Opp., 14:290-98. Documents incorporated by reference into a complaint are the proper subject of judicial notice on a motion to dismiss. *See Knievel v. ESPN,* 393 F.3d 1068, 1076 (9th Cir. 2005).

Rokoko's Request for Judicial Notice seeks notice of five documents. ECF No. 137. The first three are Plaintiff's purchase orders for Rokoko's products. *Id.*, Exs. 1-3. This action is based on Plaintiff's purchase of these products, which are directly referenced in the Amended Complaint. Am. Compl. 1:15-17. The fourth document is Rokoko's Standard Terms of Use ("2025 Terms"). ECF No. 137, Ex. 4. Excerpts of the

2025 Terms are cited by Plaintiff in his Amended Complaint and Ex. 44 of the concurrently filed exhibits. ECF No. 114-1, Ex. 44 at 147-49; Am. Compl., 5:89-95, 12:230-32, 16:305-08. The final document is the copyright registration for Plaintiff's game, The Next World, which is explicitly referenced in the Amended Complaint. ECF No. 137, Ex. 5; Am. Compl., 2:36-3:41.

Plaintiff provides no legal authority to support interpreting Rokoko's Motion as one for summary judgment under Rule 56 and should be disregarded.

B. Plaintiff's Tortious Interference Cause Of Action Fails As A Matter of Law.

1. The Elements Of Tortious Interference Are Not Met.

To establish a claim for tortious interference with prospective economic advantage, a plaintiff must show "(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional [or negligent] acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." *Crown Imports, LLC v. Superior Court,* 223 Cal. App. 4th 1395, 1404 (Cal. Ct. App. 2014). Plaintiff must also establish that Rokoko engaged in an independently wrongful act. *See Della Penna v. Toyota Motor Sales, U.S.A., Inc.,* 11 Cal. 4th 376, 393 (1995).

Plaintiff's contention that determining the sufficiency of an allegation of an independently wrongful act requires a legal conclusion misapplies the standard. Opp., 19:397. An independently wrongful act must be sufficiently pled for a court to consider a tortious interference claim. Here, Plaintiff fails to allege any specific, intentional act that would meet the requirements of a tortious interference claim. General actions are not enough. A plaintiff must allege specific, targeted conduct. *Ramona Manor Convalescent Hosp. v. Care Enterprises*, 225 Cal. Rptr. 120, 126 (Cal. Ct. App. 1986) (citing Rest. 2d Torts, § 766, com. p). At most, Plaintiff alleges Rokoko distributed a

firmware update that affected all older model smart gloves. This is not the type of specific, intentional act that is contemplated by a tortious interference claim.

Plaintiff's allegations regarding the purported contracts that he contends were interfered with are also deficient. For the first time in his Opposition, Plaintiff contends that a Nintendo contract exists, but he is unable to share it.[1] Opp., 9:154-55. "Arguments made in briefs are not facts alleged in the complaint, and the court cannot consider them in deciding a motion to dismiss." *Care First Surgical Ctr. v. ILWU-PMA Welfare Plan*, 2014 U.S. Dist. LEXIS 165744, at *14 (C.D. Cal. July 28, 2014). *See also Stine v. Trotter*, 2008 U.S. Dist. LEXIS 124835, at *10 (C.D. Cal. Aug. 13, 2008) ("[T]he Court will not consider factual allegations made in a plaintiff's opposition"). Plaintiff's claim that he is "barred from sharing" the Nintendo agreement does not excuse failure to plead facts demonstrating that he had an economic relationship with Nintendo with the probability of future benefit. Moreover, Plaintiff has still not met his burden to plead that Rokoko was aware of a contract with Nintendo.

2. The Terms Plaintiff Cites Are Inapplicable.

Additionally, Plaintiff alleges that §2.1.1 of Rokoko's 2020 License and Services Agreement ("2020 Terms") prohibits unauthorized access, harvesting, or cloud use of data. Opp., 19:397-400. However, this section only applies to a Licensee[2] performing any of those actions in connection with Rokoko's Materials.[3] It is inapplicable to Rokoko storing Plaintiff's data. In actuality, Plaintiff consented to Rokoko storing and using his data through his use of Rokoko's services. §4.1 of the 2020 Terms states:

> Licensee acknowledges and agrees that Licensee… may provide, and ROKOKO and its Resellers… may obtain, certain information and data with respect to Licensee (including, without limitation, personal information) and Licensee's business in connection with this Agreement, including, without limitation, information and data provided to or obtained

[1] Notably, Plaintiff does not address the existence of the alleged Sony contract.
[2] "'Licensee' means… (b) if there is no such entity, the individual who accepts this agreement." ECF No. 139, Ex. 3 at 29.
[3] "'ROKOKO Materials' means any materials distributed or made available by ROKOKO, directly or indirectly, including Software, Supplemental Materials, User Documentation and Excluded Materials (whether or not licensed to Licensee)." *Id.* at 27.

> by ROKOKO and its Resellers…through the Customer Information Form and otherwise, in connection with ordering, registration, activation, updating, validating entitlement to, auditing, monitoring of Installation of and Access to ROKOKO Materials, Strategic Program's and Services and managing the relationship with Licensee. Licensee hereby consents to ROKOKO maintaining, using, storing, and disclosing such information and data… in conformity with ROKOKO's policies on privacy and data protection…

(emphasis added).

Not only did Plaintiff consent to the storage and use of his data, he also agreed that Rokoko's policies on data collection, storage, and use may change, and that those changes would be applicable to him.

> Licensee acknowledges and agrees that such policies may be changed from time to time by ROKOKO, and that, effective upon posting on ROKOKO's website or other written notice from ROKOKO, Licensee will be subject to such changes.

§4.1. This section of the 2020 Terms effectively defeats any claim Plaintiff makes that Rokoko was not authorized to access his data.

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

A plaintiff asserting trade secret misappropriation must describe the subject of the misappropriation "with reasonable particularity." Cal. Code Civ. Proc. § 2019.210. "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). Here, the most Plaintiff has alleged is that he "owns proprietary designed, directed, and recorded motion-capture data… consisting of over 850 individually recorded action and cinematic movement sequences." Am. Compl., 3:42-45. Plaintiff's allegations do not satisfy the pleading requirements. Notably, Plaintiff supplies no case law to the contrary.

Plaintiff cites §3 of the 2020 Terms to support his argument that his animations are trade secrets. Opp., 20:405-18. However, this section is wholly inapplicable. The first sentence of the Supplemental Materials definition states that it is applicable to "materials other than Software and related User Documentation, that are distributed or made available by ROKOKO for use with Software." ECF No. 139, Ex. 3 at 31 (emphasis added). Section 3 of the 2020 Terms delineates that "ROKOKO['s] Materials… are valuable trade secrets of, and confidential and proprietary information of, ROKOKO and its suppliers." *Id*. at 16. Both of these sections are only applicable to Rokoko's Materials and do not support Plaintiff's claim that ***his*** animations are trade secrets.

Plaintiff also incorrectly asserts that the Court must take his allegation that the animations have not been disclosed as true. Opp., 20:420-21. "'The district court will not accept as true pleading allegations that are contradicted by facts that can be judicially noticed or by other allegations or exhibits attached to or incorporated in the pleading.'" *Fund Raising v. Alaskans for Clean Water,* 2009 U.S. Dist. LEXIS 106549, at *6 (C.D. Cal. Oct. 29, 2009) (citing 5C Wright & Miller, Fed. Prac. & Pro. § 1363 (3d ed. 2004))*; see also Roth v. Garcia Marquez,* 942 F.2d 617, 625 n. 1 (9th Cir. 1991). Plaintiff's own exhibits contradict his statement that the animations have never been disclosed. *See* Am. Compl. Ex. 15 (showing "Hollywood release event"); *Id*., Ex. 17 (showing the trailer for the game on YouTube); and *Id*., Exs. 6, 7, 23, and 53 (showing social media posts that terminate secrecy). Additionally, Plaintiff has provided no case law that supports that his public disclosure of the animations did not destroy their purported secrecy.

D. Plaintiff's Copyright Infringement Claim Fails As A Matter Of Law.

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). In order to satisfy the second prong, Plaintiff must allege that "the

infringer had access to plaintiff's copyrighted work and that the works at issue are substantially similar in their protected elements." *Cavalier v. Random House, Inc.,* 297 F.3d 815, 822 (9th Cir. 2002).

Plaintiff fails to respond to the argument that he did not sufficiently plead that any work allegedly copied was substantially similar to his work or clarify how this element is met. Instead, he responds: "Simply incorrect." Opp., 22:455-58. A conclusory statement and general reference back to the Amended Complaint does nothing to cure Plaintiff's pleading insufficiency nor shed light on his argument.

Lastly, Plaintiff claims that Rokoko had no license to use any of his data is unsupported by the evidence. Opp., 21:434-40. As explained above, §4.1 expressly allows Rokoko to store and use Plaintiff's data and §2.1.1 and §2.1.4 are inapplicable. They relate only to Plaintiff using Rokoko's Materials.

E. Plaintiff's DMCA Claim Fails As A Matter Of Law.

A violation of the DMCA requires "the defendant to possess the mental state of knowing, or having a reasonable basis to know, that his actions 'will induce, enable, facilitate, or conceal' infringement." *See Stevens v. Corelogic, Inc.,* 899 F.3d 666, 673 (9th Cir. 2019). The mental state requirement requires specific allegations. *Id.* at 674.

Plaintiff attempts to argue that the 2020 Terms state that the firmware update would be optional (they do not). Opp., 19:389-90. In any event, this is irrelevant to Rokoko's specific intent as the firmware update applied to everyone, optional or not. Next, Plaintiff claims that Rokoko's developer notes indicate that the firmware update effects older versions of their gloves, so Rokoko knowingly destroyed his equipment. Opp., 19:390-94. Again, the developer notes apply to all older models of the smart gloves. The fact that Plaintiff owned an older model does not show that Rokoko had the requisite intent. These allegations fail to demonstrate the specific intent needed to support a DMCA claim.

Plaintiff also entirely ignores the fact that the 2025 Terms that form the basis of his DMCA claim were not amended until February 22, 2025—more than six months

after he admits he terminated his use of Rokoko's products. Opp., 7:123-24. Accordingly, the 2025 Terms never applied to Plaintiff. Without distribution, Plaintiff is unable to establish an injury and his DMCA claim fails as a matter of law.

Accordingly, Plaintiff's DMCA claim fails.

F. Plaintiff's RICO Claim Fails As A Matter Of Law.

1. Plaintiff Has Not Established Leave To Add A RICO Claim.

This Court granted Plaintiff leave to amend only as to his first, third, seventh, eighth, ninth, eleventh, twelfth, and fourteenth causes of action. ECF No. 113. Where leave to amend is given to cure deficiencies in specified claims, courts routinely dismiss or strike new claims alleged for the first time in the amended pleading. *Ketab Corp. v. Mesriani & Assocs.,* 2015 U.S. Dist. LEXIS 163133, at *22 (C.D. Cal. Dec. 4, 2015).

When a court's order grants leave to amend only existing causes of action, a plaintiff must seek leave of court or defendant's written consent to add additional causes of action. *Benton v. Baker Hughes*, 2013 U.S. Dist. LEXIS 94988, at *8 (C.D. Cal. June 30, 2013). Plaintiff did neither.

Moreover, Plaintiff's contention that he reserved the right to add a RICO claim in his original Complaint is irrelevant. Opp., 23:471-76. Plaintiff's original Complaint is not the operative pleading and, even if considered, amendment is untimely. Under Federal Rule of Civil Procedure 15(a)(1), a party may amend its pleading once as a matter of course within 21 days after serving it. Plaintiff's window to amend as of right expired long ago.

2. Plaintiff's Opposition Fails To Address Pleading Deficiencies.

Even if Plaintiff's RICO claim was properly before the Court (it is not), Plaintiff's Opposition proffers no authority or argument to demonstrate satisfaction of the heightened pleading requirements of Rule 9(b) *or* the elements of a RICO claim.

To survive a motion to dismiss, fraud allegations must be accompanied by "the who, what, when, where, and how" of the misconduct charged. *Vess v. Ciba-Geigy Corp. USA,* 317 F.3d 1097, 1106 (9th Cir. 2003). Furthermore, a RICO claim requires

a "pattern" of racketeering activity (i.e. "predicate acts"), which must be related and "amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Northwestern Bell Tel. Co.,* 492 U.S. 229, 239 (1989).

Plaintiff's sole argument regarding his RICO claim states that "RICO is plead with the precise requirements compliant with Rule 9(b)" and that "[e]nterprise plausibly alleged through Defendant's own statements, third party sales and investor materials. . ." ECF No. 140 at 23:478-34:486. But Plaintiff has not adequately identified an "enterprise" distinct from Rokoko itself, and conclusory allegations do not establish an association-in-fact enterprise. A bare recitation of the elements of a RICO claim falls far below the heightened pleading standard of Rule 9(b). Accordingly, Plaintiff's Opposition fails to address the procedural and substantive deficiencies identified, and Plaintiff's RICO claims must be dismissed.

G. Plaintiff's Opposition Fails To Establish Right To Jury Demand

Pursuant to Rule 38, a party waives the right to jury trial unless a demand is made within 14 days after service of the last pleading directed to the issue. Plaintiff's belated jury demand comes far too late and constitutes a waiver.

Plaintiff's claim that "the Court already accepted the designation" mischaracterizes the record. Opp., 24:488-89. On December 25, 2025, the Court accepted a notice of errata due to misindexed exhibits. ECF No. 115, 18. Administrative acceptance of a re-formatted pleading is not a finding on the merits. The Court's acceptance of a corrected filing does not cure Plaintiff's failure to demand a jury in his initial pleading or seek leave to amend.

H. Plaintiff's Assertions Regarding "Improper" Arguments And Estoppel Are Unfounded.

1. No Evidence Was Falsified.

While it is unclear where Plaintiff sourced the 2020 Terms he references, it is clear that they are from an entirely different agreement than the 2025 Terms Rokoko put forth in its Request for Judicial Notice. What Plaintiff puts forth is a License and

Services Agreement. ECF No. 139, Ex. 3. The terms Rokoko referenced are the Standard Terms of Use. ECF No. 137, Ex. 4. Contrary to Plaintiff's assertions, the Standard Terms of Use exist and are not fabricated. They are simply a separate contract from the one he was referencing.

2. Plaintiff Takes Issue With Claims That Do Not Appear In The Motion.

Plaintiff spends significant time refuting a claim that does not appear in Rokoko's Motion. He asserts that Rokoko stated that "the Nintendo Developer Portal is free for anyone to join," which does not appear in the Motion. Opp., 8:129-9:35. While, it was included in the withdrawn Motion to Dismiss, it was removed after a meet and confer with Plaintiff.

3. Plaintiff's Repeated Unfounded Allegations Regarding AI Caselaw Are Demonstrably False.

As demonstrated *ad nauseum*, Rokoko has never cited to or relied upon "AI-fabricated" case law in its correspondence to Plaintiff or in its filings with this Court. Presently, Plaintiff asserts that *Go Daddy Operating Co., LLC v. Ghaznavi,* 2018 U.S. Dist. LEXIS 33002 (N.D. Cal. Feb. 28, 2018) is AI hallucinated case law. Opp., 12:258-262. But Plaintiff acknowledges its existence with a case summary. *Id*. at 12:262-13:271. While there was a typographical error in the citation (the appropriate page is 29, not 9), the case stands for the proposition cited. This is yet another unfounded accusation that minimal investigation could have prevented.

4. Rokoko Is Not Estopped From Moving To Dismiss Plaintiff's Amended Complaint.

Plaintiff argues Rokoko is estopped from moving to dismiss due to its discovery responses. Opp., 14:300-17:353. Plaintiff claims that he detrimentally relied on Rokoko's statements in its discovery responses when forming his litigation strategy, but provides nothing beyond vague, conclusory statements to support his allegation. Opp.,

15:311-16. These statements are not enough. Plaintiff cannot plausibly allege detrimental reliance because, notably, discovery has not closed.

Rokoko's discovery responses are proper and do not waive any defense, and Plaintiff still has the ability to engage in discovery. Accordingly, Plaintiff's claim of estoppel should be disregarded.

III. CONCLUSION

For the reasons stated herein, the Court should grant Rokoko's Motion to Dismiss in its entirety without leave to amend.

DATED: February 23, 2026

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant Rokoko Electronics, Inc., certifies that this brief contains 2,954 words, which complies with the word limit of L.R. 11-6.1.

DATED: February 23, 2026

/s/ Katherine J. Ellena
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