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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 MATTHEW R. WALSH

16 Plaintiff,

17 vs.

18 ROKOKO ELECTRONICS, and
DOES 1 through 50, inclusive,

19 Defendant.

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

[Assigned to Hon. Otis D. Wright, II,
Courtroom 5D; Hon. Rozella A. Oliver,
Courtroom 590]

**DEFENDANT ROKOKO
ELECTRONICS' OPPOSITION TO
PLAINTIFF MATTHEW R.
WALSH'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

[Concurrently Filed With Response to
Plaintiff's Separate Statement,
Evidentiary Objections, Declarations of
Mikkel Overby and Katherine Ellena]

State Court Action Filed: May 12, 2025
Removal Date: June 12, 2025
Discovery Cutoff: August 10, 2026
Trial Date: March 9, 2027

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Time: 10:00 a.m.
Place: Courtroom 5D

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On April 10, 2026, this Court partially granted Rokoko’s Motion to Dismiss Plaintiff’s Amended Complaint, dismissing multiple causes of action. One day later, Plaintiff Matthew R. Walsh rushed to file this Motion. The timing is not a coincidence; it is a litigation tactic by a vexatious plaintiff who would rather ambush Rokoko than engage in orderly, good-faith litigation. Plaintiff filed this motion nearly four months before the close of fact discovery and more than four months before the close of expert discovery, at a stage when depositions have not been taken, written discovery disputes remain unresolved, discovery requests remain unanswered by Plaintiff, and Rokoko has not had any meaningful opportunity to develop the factual record.

Notwithstanding the ongoing state of discovery, Plaintiff’s copyright infringement cause of action fails at the first element: ownership of a valid copyright. The sole copyright registration Plaintiff relies upon—Registration No. PAu 4-279-489—covers an audiovisual work titled “The Next World” that was purportedly completed in 2017. But Plaintiff does not claim that Rokoko copied “The Next World.” Instead, he claims that Rokoko copied approximately 850 animation files he created using Rokoko’s motion capture technology beginning in 2020—three years after the registered work was allegedly completed—and then sublicensed those animations to third parties without his agreement. Plaintiff has produced no deposit copies supporting his copyright, no evidence connecting a single one of these animation files to his copyright registration, and no evidence that the animation files constitute original, protectible expression under the Copyright Act. His ownership claim rests on nothing more than his own self-serving, uncorroborated assertions.

Plaintiff’s claim likewise fails at the second element: copying by Rokoko. The undisputed facts show that it was Plaintiff—not Rokoko—who caused any “copying” of his animation files. Rokoko Studio is a cloud-based platform that automatically syncs user-generated data to the cloud at the user’s direction after the user agrees to the

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1 Rokoko Studio Terms and voluntarily uploads the data to the platform. To be clear—a
2 user cannot download or otherwise use the platform without first agreeing to the Terms.
3 Plaintiff knew this; it is a core, advertised feature of the product he voluntarily used for
4 years. Under binding Ninth Circuit authority, operating a system that makes copies at
5 a user’s command does not make the system operator liable for copyright infringement.
6 Plaintiff’s remaining allegations—that Rokoko sublicensed his data—are entirely
7 fabricated. He points to no evidence supporting these inflammatory accusations
8 because no such evidence exists.

9 Even if Plaintiff could establish copying—and he cannot—Rokoko had an
10 express license to use Plaintiff’s data. Walsh agreed to Rokoko’s terms of use each
11 time he installed or updated Rokoko Studio, and those terms expressly authorize
12 Rokoko to collect and use User Content. Plaintiff has repeatedly used the Rokoko
13 Studio software both after the 2025 Terms of Use took effect and after he filed this
14 action. Specifically, Plaintiff used Rokoko Studio on multiple occasions after March
15 22, 2025, including spending over three and a half hours logged into Rokoko Studio
16 just weeks before filing this lawsuit.

17 Finally, this motion is premature. Plaintiff filed this motion on April 11, 2026—
18 just one day after this Court ruled on Rokoko’s Motion to Dismiss his First Amended
19 Complaint—before Rokoko’s deadline to answer his copyright infringement claim had
20 even passed. Indeed, as of the date of the filing of this opposition, Rokoko’s deadline
21 to respond to Plaintiff’s copyright infringement claim has still not passed. Fact
22 discovery does not close until August 10, 2026, and expert discovery does not close
23 until August 28, 2026. Rokoko has outstanding discovery requests to which Plaintiff
24 has not yet responded, pending discovery disputes remain unresolved, and Rokoko has
25 not yet had the opportunity to depose Plaintiff in either his lay or expert capacity. No
26 reasonable litigant would move for summary judgment under these circumstances.
27 Plaintiff’s decision to do so confirms what his conduct throughout this litigation has
28 made abundantly clear: he is not interested in a fair adjudication on the merits—he is

1 interested in leveraging the burdens and costs of litigation against Rokoko, and this
2 Motion is just the latest vehicle for that abuse. The Motion should be denied.

3 **II. BACKGROUND**

4 **A. Plaintiff Purchases And Begins Using Rokoko’s Motion Capture**
5 **Hardware And Software Products.**

6 In or about August 2020, Walsh placed an order for motion capture hardware
7 products—including a Rokoko Smartsuit Pro suit and Smartgloves—from Rokoko, a
8 Danish motion capture hardware and software company. (Rokoko’s Additional Material
9 Facts (“AMF”) ¶ 15). From September 2020 onwards, Walsh used Rokoko’s hardware
10 and its accompanying software application, Rokoko Studio Legacy (and later, Rokoko
11 Studio),¹ to create motion-capture animation files for multiple video game projects,
12 including The Next World. (AMF ¶ 16).

13 Rokoko Studio is an online, cloud-based platform that stores and syncs the
14 motion capture data created by a user who registers an account with Rokoko. (AMF ¶
15 17). To create an animation file using Rokoko’s products, the user wears the motion
16 capture hardware (*i.e.*, the Smartsuit Pro or Smartgloves) which captures and records
17 the wearer’s movements. (AMF ¶ 18). Those movements are then translated into data
18 that is transmitted to the Rokoko Studio software platform where the user can edit the
19 resulting animation file. (AMF ¶ 19). Once added to the user’s Rokoko Studio account,
20 the motion capture file is automatically uploaded to the cloud. (AMF ¶ 20). As the user
21 makes edits to an animation file, those edits are automatically uploaded (or “synced”)
22 to the cloud. (AMF ¶ 21). Within the Rokoko Studio platform, users can see a “cloud
23 icon” which indicates that their data is being synced to the cloud, and can be clicked to
24 show a list of all content that is being synced. (AMF ¶ 22). The cloud-storage and cloud-
25 syncing feature of Rokoko Studio is a major selling point for the product. (AMF ¶ 23).
26 If a user would prefer that their animations not be synced to the cloud, Rokoko’s

27 _____
28 ¹ In 2022, Rokoko transitioned to Rokoko Studio, a cloud-based software that allows registered Rokoko users to access their accounts from multiple devices. (AMF ¶ 27).

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1 Enterprise plan allows users to opt out. (AMF ¶ 24). Rokoko does not store user data
2 itself and instead contracts with Amazon Web Services to provide secure, cloud storage
3 and store all synced data. (AMF ¶ 25).

4 **B. By Downloading and Using Rokoko Studio Legacy and Rokoko**
5 **Studio, Plaintiff Agrees To Rokoko’s Terms And Conditions.**

6 By installing Rokoko Studio, and its various updates, Plaintiff agreed to
7 Rokoko’s terms and conditions, including any revised terms and conditions. (AMF ¶
8 28). Indeed, Plaintiff would not be able to install Rokoko Studio or any of its software
9 updates without first clicking on a button acknowledging that he agrees to Rokoko’s
10 terms and conditions. (AMF ¶ 29). Since the most recent version of Rokoko’s terms and
11 conditions went into effect on March 22, 2025, Plaintiff has logged into and used
12 Rokoko Studio multiple times, including on December 27, 2025. (AMF ¶ 30). Rokoko
13 has never sublicensed Plaintiff’s data and Plaintiff’s data is not part of any of Rokoko’s
14 generative AI or motion capture products. (AMF ¶¶ 31-32).

15 Under the “Rokoko Studio End User License Agreement,” effective April 8, 2020
16 (“2020 EULA”), Plaintiff “agree[d] that [Rokoko] may collect and use technical data,
17 usage data and related information—including but not limited to technical information
18 about your device, system and application software, and peripherals—that is gathered
19 periodically to facilitate the provision of software updates, product support, and other
20 services to you (if any) related to the Rokoko Studio software and Rokoko Studio Add-
21 On.” (AMF ¶ 33).

22 Under the “Rokoko Studio – Standard Terms of Use,” effective November 1,
23 2022 (“2022 ToU”), Plaintiff agreed that Rokoko “may collect and use (i) User
24 Content. . . .” (AMF ¶ 34). The 2022 ToU, in turn, defines “User Content” as “all
25 information and content that you create/generate using, submit to use, or use with or
26 store within the Site and/or Services (including animations, 3D models, images, audio,
27 and related content, as well as user comments). . . .” (AMF ¶ 35). The 2022 ToU also
28 expressly defines the “Services” that Rokoko is providing as “the Rokoko Studio

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1 platform located at <https://www.rokoko.com/studio> (Site), which allows users to create,
2 store, and share 3D assets (collectively, with all other services accessible through the
3 Site. . . .)” (AMF ¶ 36).

4 In February 2025, Rokoko sent an email to users announcing that “30 days from
5 now, on March 22, 2025, we will make a change in our Terms of Use,” describing the
6 most significant update as allowing Rokoko to “leverage this data to enhance our
7 products and services,” including “the *possibility* of sublicensing completely
8 anonymized data to third parties, while ensuring that the data can never be redistributed
9 in its original form.” (AMF ¶ 37) (emphasis added).

10 By downloading and using Rokoko Studio after March 22, 2025, which Plaintiff
11 did, Plaintiff agreed to the “Rokoko Studio and Vision – Standard Terms of Use,”
12 effective March 22, 2025 (“2025 ToU”). (AMF ¶ 38). The 2025 ToU provide that users
13 “hereby grant us [Rokoko] a perpetual, worldwide, non-exclusive, royalty-free,
14 sublicensable right to access, use, copy, and modify any intellectual property rights that
15 arise in connection with the User Content, Usage Data and any other Data related to
16 you,” with the condition that “All User Content is to be fully anonymized and never
17 distributed in its original form from any subcontractor or third-party licensor. (AMF ¶
18 39). The 2025 ToU also include a Section 3.4 provision stating that the user agrees
19 Rokoko may collect and use User Content, Usage Data, technical data, and related
20 information for service provision, service improvement, improvement of other
21 company products, and sublicensing “to third parties in an anonymized form never to
22 be redistributed in its original form strictly for the purpose of developing and improving
23 their services or products.” (AMF ¶ 40).

24 **C. Plaintiff’s Copyright Registration And Infringement Claims.**

25 Plaintiff holds a single copyright registration—Registration No. PAu 4-279-
26 489—for a work titled “The Next World.” (AMF ¶ 41). The registration identifies the
27 work as an “Audiovisual Work” authored solely by Plaintiff, with a listed year of
28 completion of 2017. (AMF ¶ 42). The effective date of registration is July 6, 2025, and

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1 the registration decision date was November 25, 2025—both postdating the filing of
2 this action. (AMF ¶¶ 43-44).

3 Notably, Plaintiff did not begin using Rokoko’s motion capture technology until
4 2020—three years after the copyright registration lists the year of completion for The
5 Next World. (AMF ¶ 45). Nevertheless, Plaintiff claims copyright protection under
6 Registration No. PAu 4-279-489 (completed in 2017) over approximately 850
7 animation files he created using Rokoko’s software between 2020 and 2024, contending
8 that Rokoko “took at least 852 of Plaintiff’s animations over a period of about four
9 years.” (Mot. at 4, 19) (AMF ¶ 46). Plaintiff has not produced the deposit copies of the
10 copyrighted work, nor has he submitted any evidence establishing that the animation
11 files created with Rokoko’s motion capture technology are encompassed by the 2017
12 “Audiovisual Work” registration. (AMF ¶¶ 47-48; Declaration of Katherine Ellena
13 (“Ellena Decl.”), ¶¶ 12-13).

14 **D. The Parties’ Discovery Efforts.**

15 Plaintiff filed his original Complaint in the Superior Court of California, County
16 of Los Angeles, on May 12, 2025, asserting claims for, among other things, tortious
17 interference, fraud, intellectual property theft, and breach of warranty. (ECF No. 1-1)
18 (AMF ¶ 49). Rokoko removed the action to this Court on June 12, 2025. (ECF No. 1.)
19 On December 22, 2025, the Court granted Rokoko’s Motion to Dismiss the original
20 Complaint with leave to amend some causes of action, dismissing with prejudice other
21 causes of action. (ECF No. 113). Two days later, Walsh filed an Amended Complaint
22 on December 24, 2025. (ECF No. 114). On April 10, 2026, the Court partially granted
23 Rokoko’s Motion to Dismiss the Amended Complaint (ECF No. 165), dismissing two
24 causes of action without leave to amend, dismissing two causes of action with leave to
25 amend, and denying dismissal as to Plaintiff’s “Intellectual Property Infringement”
26 cause of action (Count III). The following day, April 11, 2026, Plaintiff filed this
27
28

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1 Motion for Partial Summary Judgment on his “Intellectual Property Infringement”
2 cause of action.² (ECF No. 167).

3 The Court issued a Scheduling and Case Management Order on November 25,
4 2025 (ECF No. 103), setting a fact discovery cutoff of August 10, 2026, and an expert
5 discovery cutoff of August 28, 2026. The trial is set for March 9, 2027.

6 Rokoko propounded its First Set of Requests for Production and Interrogatories
7 (“Rokoko’s First Set of Discovery”) to Plaintiff on November 3, 2025. (AMF ¶ 50;
8 Ellena Decl., ¶ 3). Plaintiff served his responses and objection to Rokoko’s First Set of
9 Discovery on March 6, 2026. (AMF ¶ 51; Ellena Decl., ¶ 4). The parties met and
10 conferred regarding Plaintiff’s responses on March 18, 2026 and April 1, 2026 and
11 reached an impasse on several of Plaintiff’s discovery responses. (AMF ¶ 52; Ellena
12 Decl., ¶ 5). On April 7, 2026, Rokoko sent Plaintiff its final version of an IDC form
13 regarding Plaintiff’s First Set of Discovery requests and asked for Plaintiff’s input.
14 (AMF ¶ 53; Ellena Decl., ¶ 6). At the time of filing this Opposition, an informal
15 discovery conference (“IDC”) remains outstanding on both parties’ responses to written
16 discovery requests and responses where the Parties have reached an impasse. (AMF ¶
17 54; Ellena Decl., ¶ 7).

18 On April 7, 2026, Rokoko propounded its First Set of Requests for Admission
19 and its Second Set of Requests for Production on Plaintiff. (AMF ¶ 55; Ellena Decl., ¶
20 8). Rokoko also propounded its Third Set of Requests for Production on April 22, 2026,
21 specifically directed at Plaintiff’s expert report submitted in support of this Motion,³
22 and his “intellectual property infringement” cause of action. (AMF ¶ 56; Ellena Decl.,
23 ¶ 9). Plaintiff has not yet responded to any of the discovery Rokoko served on April 7
24 or April 22, and his responses are not due until May 11, 2026 and May 26, 2026

25 _____
26 ² On April 17, 2026, Plaintiff filed his Second Amended Complaint (ECF No. 172),
which Rokoko intends to move to dismiss.

27 ³ Rokoko intends to move to exclude Plaintiff’s expert report under *Daubert v. Merrell*
28 *Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), but cannot do so until expert
discovery is completed and Plaintiff’s deposition, in his capacity as a self-designated
expert, is taken.

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1 respectively. (AMF ¶ 57; Ellena Decl., ¶ 10). As of the date of this filing, more than
2 three months remain before the close of fact discovery, and nearly four months remain
3 before the close of expert discovery. (AMF ¶ 58; Ellena Decl., ¶ 11).

4 **III. LEGAL STANDARD**

5 A party seeking summary judgment has the burden of “informing the district
6 court of the basis for its motion, and identifying those portions of ‘the pleadings,
7 depositions, answers to interrogatories, and admissions on file, together with the
8 affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of
9 material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed.
10 2d 265 (1986). “Where the moving party will have the burden of proof on an issue at
11 trial, the movant must affirmatively demonstrate that no reasonable trier of fact could
12 find other than for the moving party.” *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978,
13 984 (9th Cir. 2007). As such, summary judgment must be denied when the movant fails
14 to meet its initial burdens of production and persuasion. *Nissan Fire & Marine Ins. Co.*
15 *v. Fritz Cos.*, 210 F.3d 1099, 1102-03 (9th Cir. 2000).

16 If, however, “the moving party meets its initial burden, the non-moving party
17 must set forth, by affidavit or as otherwise provided in Rule 56, ‘specific facts showing
18 that there is a genuine issue for trial.’” *Soremekun*, 509 F.3d at 984. In making this
19 determination, the court “draws all inferences in the light most favorable to the
20 nonmoving party.” *Id.*

21 Finally, “[t]he evidence presented by the parties must be admissible.” *Id.* (citing
22 Fed. R. Civ. Proc. 56(e)). “Conclusory, speculative testimony in affidavits and moving
23 papers is insufficient to raise genuine issues of fact and defeat summary judgment.” *Id.*

24 **IV. ARGUMENT**

25 **A. Plaintiff’s Motion Should Be Denied Under Rule 56(d) As Discovery**
26 **Is Still Ongoing And The Pleadings Are Not Set.**

27 Under Fed. R. Civ. Proc. Rule 56(d), the Court has discretion to defer
28 consideration of or deny a motion for summary judgment “[i]f a nonmovant shows by

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1 affidavit or declaration that, for specified reasons, it cannot present facts essential to
2 justify its opposition. . . .” Plaintiff’s motion is a prime example of a summary
3 judgment motion that should be deferred or denied under Rule 56(d).

4 First, discovery is only in its early stages and is far from complete. Under the
5 operative scheduling order, fact discovery is not set to close until August 10, 2026, and
6 expert discovery is not set to close until August 28, 2026. (AMF ¶ 58; Ellena Decl., ¶
7 11). “Motions for summary judgment are frequently considered premature and denied
8 when discovery has not been completed, under Federal Rule of Civil Procedure 56(d).”
9 *Ruiz v. Sw. Answering Serv., Inc.*, 2024 WL 5317308, at *3 (C.D. Cal. Oct. 16, 2024)
10 (citation modified); *see also Aaron & Andrew, Inc. v. Sears Holdings Mgmt. Corp.*,
11 2017 WL 3449598, at *3 (C.D. Cal. Apr. 14, 2017) (“Because discovery is still ongoing
12 and will not close for over eight months, it would be premature to grant summary
13 judgment.”); *Supinsky v. Kelly*, 2022 WL 19571620, at *3 (C.D. Cal. Oct. 24, 2022)
14 (deferring consideration of summary judgment motion until after close of discovery
15 which was “only a week away”); *Morris v. Homecomings Fin., LLC*, 2008 WL
16 3126258, at *8 (S.D. Cal. Aug. 4, 2008) (“A summary judgment motion generally will
17 be premature until defendant files an answer, an early neutral evaluation is held, a case
18 management conference is held, and discovery is complete.”). The fact that Plaintiff
19 just recently filed a second amended complaint to which Rokoko has not yet responded
20 provides further basis to find that Plaintiff’s summary judgment motion is premature,
21 and indeed courts have stricken summary judgment motions on that basis. *Reyes v.*
22 *United States Secretary of HUD*, 2022 WL 19829454, at *2 (C.D. Cal. Dec. 7, 2022)
23 (striking plaintiff’s motion for summary judgment as premature because defendant had
24 not yet answered the complaint) (Wright, J.); *Bradford v. Ogbuehi*, 2020 WL 9886194,
25 at *1-2 (E.D. Cal. Feb. 20, 2020) (denying summary judgment motions as premature
26 where pleadings were not yet set).

27 Second, while discovery has commenced, Plaintiff’s discovery responses thus far
28 have been deficient, and Plaintiff has failed to produce numerous categories of

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1 requested documents.⁴ (Ellena Decl., ¶ 5). For example, Plaintiff has refused to
2 produce documents in support of his General Damages claim (including as it relates to
3 his copyright infringement claim), social media posts and/or communications with third
4 parties regarding Rokoko, or copies of his Third-party contracts with game studios for
5 the publishing and distribution of his video game. (AMF ¶ 51; Ellena Decl., ¶ 5).
6 Rokoko has been meeting and conferring with Plaintiff regarding these deficiencies
7 since March 18, 2026, and the parties have prepared IDC statements for submission to
8 Magistrate Judge Oliver. (AMF ¶¶ 51-54; Ellena Decl., ¶¶ 5-7). While Rokoko will
9 continue to attempt to resolve these issues through the meet and confer process, Rokoko
10 anticipates that these issues will need to be brought before Magistrate Judge Oliver
11 within the next few weeks. Given that numerous outstanding discovery disputes remain
12 unresolved, summary judgment is premature. Ninth Circuit precedent suggests that a
13 pending discovery dispute may be sufficient to raise Rule 56(d) consideration. *See*
14 *Sernoffsky v. Novak*, 2023 WL 8439561, at *4 (S.D. Cal. Dec. 4, 2023) (“Ninth Circuit
15 precedent suggests that a pending discovery dispute may be sufficient to raise Rule
16 56(d) consideration.” (citing *Garrett v. San Francisco*, 818 F.2d 1515, 1518 (9th Cir.
17 1987))); *Burlington N. Santa Fe R. Co. v. Assiniboine & Sioux Tribes of Fort Peck*
18 *Rsrv.*, 323 F.3d 767, 773 (9th Cir. 2003) (“Where, however, a summary judgment
19 motion is filed so early in the litigation, before a party has had any realistic opportunity
20 to pursue discovery relating to its theory of the case, district courts should grant any
21 Rule 56(f) motion fairly freely.”).

22 Third, expert discovery is months away from completion. Plaintiff served his
23 expert report—which he relies on extensively in his summary judgment motion—on
24

25 ⁴ Moreover, to the extent Plaintiff suggests that his productions have been voluminous
26 while Rokoko’s productions to date have not, this characterization is misleading.
27 Rokoko’s document productions are ongoing, Rokoko has no obligation to produce
28 documents in response to Plaintiff’s objectionable requests of which the parties have
met and conferred over and are the subject of a forthcoming IDC that Plaintiff has
requested, and Plaintiff’s productions consist almost entirely of materials Plaintiff
himself pre-prepared in connection with his affirmative lawsuit.

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1 March 8, 2026. (Ellena Decl., ¶ 11). Rokoko intends to move to exclude Plaintiff’s
2 expert report under *Daubert*, but it cannot do so until expert discovery is completed.
3 (Ellena Decl., ¶ 11). To that end, on April 22, 2026, Rokoko served discovery requests
4 aimed at Plaintiff’s expert report, including requests seeking documents Plaintiff relied
5 upon in drafting his expert report and documents related to Plaintiff’s purported
6 qualifications to act as an expert in this action. (AMF ¶ 56; Ellena Decl., ¶ 9). Rokoko
7 cannot take Plaintiff’s expert deposition until these materials are received, and cannot
8 move to exclude the expert report without the deposition. (Ellena Decl., ¶ 11).

9 Finally, in addition to the above, numerous discovery requests have recently been
10 propounded on Plaintiff which remain outstanding because his response is not yet due.
11 (AMF ¶ 57; Ellena Decl., ¶¶ 8-10). On April 7, 2026, Rokoko propounded its first set
12 of Requests for Admission and its second set of Requests for Production of Documents.
13 (AMF ¶ 57; Ellena Decl., ¶ 8) And on April 22, 2026, as discussed above, Rokoko
14 propounded its third set of Requests for Production of Documents, which is directed at
15 Plaintiff’s expert report and also seeks discovery related to Plaintiff’s copyright
16 infringement claim, including the deposit copy supporting Plaintiff’s copyright. (AMF
17 ¶¶ 56-57; Ellena Decl., ¶ 9). The specific information that Rokoko believes this
18 discovery will reveal and why that discovery is necessary for Rokoko to oppose
19 Plaintiff’s summary judgment motion is discussed in further detail below.

20 **B. Plaintiff Failed To Authenticate His Documentary Evidence;**
21 **Unauthenticated Documents Cannot Be Considered On A Motion For**
22 **Summary Judgment.**

23 As discussed in more detail in Rokoko’s concurrently filed evidentiary
24 objections, none of the fifteen (15) documentary exhibits submitted in support of
25 Plaintiff’s motion has been properly authenticated. It is well-settled that “[a] trial court
26 can only consider admissible evidence in ruling on a motion for summary judgment”
27 and that “[a]uthentication is a ‘condition precedent to admissibility’” *Orr v. Bank*
28 *of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002). For that reason, “[the Ninth

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1 Circuit] ha[s] repeatedly held that unauthenticated documents cannot be considered in
2 a motion for summary judgment.” *Id.* Because Plaintiff has failed to offer any
3 admissible evidence in support of his motion, Plaintiff’s motion for summary judgment
4 must be denied. *Shakur v. Schriro*, 514 F.3d 878, 890 (9th Cir. 2008) (reversing district
5 court’s grant of summary judgment because “record. . . contains no competent evidence
6 as to the additional cost of providing Halal or kosher meat to ADOC's Muslim
7 prisoners. . .”).

8 **C. Plaintiff Fails To Meet His Burdens To Show That He Owns A Valid**
9 **Copyright That Is Connected To His Infringement Cause Of Action.**

10 Even if the Court could consider Plaintiff’s unauthenticated evidentiary
11 submissions, Plaintiff’s showing would fail to meet his burden on summary judgment.
12 “When the moving party also bears the burden of persuasion at trial, to prevail on
13 summary judgment it must show that ‘the evidence is so powerful that no reasonable
14 jury would be free to disbelieve it.’” *Shakur*, 514 F.3d at 890. Put differently,
15 “[b]ecause [Plaintiff] bears the burden of proof on this issue, it must meet a high
16 standard to obtain summary judgment.” *In re TFT-LCD (Flat Panel) Antitrust Litig.*,
17 820 F. Supp. 2d 1055, 1060 (N.D. Cal. 2011). As such, Plaintiff must “present
18 compelling evidence establishing the essential elements of his claim ‘beyond
19 peradventure’ in order to obtain summary judgment in his favor.” *Gonzales v. Arrow*
20 *Fin. Servs. LLC*, 489 F. Supp. 2d 1140, 1150 (S.D. Cal. 2007).

21 To state a claim for copyright infringement, a plaintiff must prove two elements:
22 “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work
23 that are original.” *Funky Films, Inc. v. Time Warner Entm’t Co., L.P.*, 462 F.3d 1072,
24 1076 (9th Cir. 2006). With respect to the first prong, the only evidence Plaintiff has
25 submitted is a copy of his copyright registration. For the reasons below, that paltry
26 evidentiary submission is plainly insufficient to meet his high burden on summary
27 judgment to prove ownership of a valid copyright.

28

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1 1. *Plaintiff Fails To Present Any Evidence Defining The Scope Of His*
2 *Purported Copyright.*

3 Merely providing a copy of a certificate of registration from the Copyright Office
4 is not enough to satisfy the ownership element. That is because “[t]he mere fact that a
5 work is copyrighted does not mean that every element of the work may be protected.”
6 *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 348 (1991). Put differently,
7 “[o]riginality remains the sine qua non of copyright; accordingly, copyright protection
8 may extend only to those components of a work that are original to the author.” *Id.*
9 That principle gives rise to the “need to delineate, with respect to the copyright
10 protection accorded a particular work, whether the particular claim of infringement
11 concerns the protected or the unprotected aspects of the work.” *Corbello v. Valli*, 974
12 F.3d 965, 973 (9th Cir. 2020). Here, Plaintiff’s registered work is an audiovisual work
13 titled “The Next World” that was completed in 2017. (Plaintiff’s Undisputed Material
14 Facts (“UMF”), Ex. 12; AMF ¶¶ 41-42). Thus, only the contents of that registered
15 work, as set forth in the submitted deposit copy, are covered by Plaintiff’s registration.
16 *Straughter v. Concord Music*, 2020 WL 6828920, at *9 (C.D. Cal. Oct. 13, 2020) (“The
17 deposit copy ‘circumscribes the scope of the copyright’ and ‘defines the four corners
18 of’ it.”). However, Plaintiff is not arguing that Rokoko copied “The Next World” or
19 any portion of “The Next World.” Instead, he appears to be arguing that at least 850
20 “animation files” he created using Rokoko’s motion capture and animation technology
21 products after 2020—three years after the stated completion of his copyright—are the
22 works that were “copied.” (See Mot. at 12, 15). But, by Plaintiff’s own admission, those
23 “animation files” were created in 2020 and therefore could not possibly be part of the
24 audiovisual work he admits was completed three years earlier in 2017. (AMF ¶¶ 43-
25 44). Because Plaintiff’s registration does not, on its face, cover the animation files
26 created in 2020 that he contends were copied, his copyright infringement claim fails at
27 the threshold registration requirement element and summary judgment must be denied.
28 *Fourth Estate Pub. Ben. Corp. v. Wall-Street.com, LLC*, 586 U.S. 296, 302 (2019).

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1 Plaintiff’s copyright infringement claim also fails at the first element because he
2 has not provided any evidence that he owns a valid copyright in the “animation files”
3 he contends were copied. The only evidence of ownership Plaintiff relies on is the
4 copyright registration for “The Next World”, which as set forth above, cannot possibly
5 include animations created three years later through Rokoko’s platform. While Plaintiff
6 contends that there are “at least 850 proprietary motion-capture animation data files” at
7 issue in this action— (Mot. at 4; *see also* Mot. at 19) (arguing that “Rokoko took at least
8 852 of Plaintiff’s animations over a period of about four years”)—he fails to provide
9 any evidence connecting even one of these files to his registered audiovisual work.

10 2. *Plaintiff Fails To Present Any Evidence That His Works Constitute*
11 *Protectible Expression Under The Copyright Laws.*

12 Beyond this, Plaintiff presents no evidence that the “animation files” or
13 “animations” are an original, protectible expression that is even capable of copyright
14 protection. *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 363 (1991) (“As a
15 constitutional matter, copyright protects only those constituent elements of a work that
16 possess more than a de minimis quantum of creativity.”).

17 Even if Plaintiff had presented evidence that his “animations” are capable of
18 copyright protection, that too fails to satisfy the first element of his copyright
19 infringement claim. Plaintiff’s “animations” are not drawn graphics, they are allegedly
20 created from a combination of movements performed by a person wearing Rokoko’s
21 motion capture and animation technology suit and are thus akin to choreography. But
22 individual movements are not subject to copyright protection, and only a
23 “choreographer’s ‘selection and arrangement of the [work’s] otherwise unprotected
24 elements’” is copyrightable. *Hanagami v. Epic Games, Inc.*, 85 F.4th 931, 943 (9th Cir.
25 2023) (“while individual dance movements may not receive protection, their ‘[o]riginal
26 selection, coordination, and arrangement . . . may be protect[a]ble expression.”).
27 Plaintiff offers no evidence that the “selection and arrangement” of the movements
28 performed wearing Rokoko’s technology is original, protectable expression.

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1 3. *Additional Discovery Is Necessary To Confirm That Plaintiff Does*
2 *Not Have A Valid Copyright.*

3 While the Court can deny the motion on the merits for the above-stated reasons
4 alone, they also vividly illustrate why additional discovery is necessary. Rokoko has
5 propounded discovery requests seeking, among other things: “Documents sufficient to
6 show [Plaintiff’s ownership of each copyrighted work that [Plaintiff] contend[s]
7 Rokoko infringed”; “Documents sufficient to show the specific elements of [Plaintiff’s]
8 copyrighted works that [Plaintiff] contend[s] Rokoko copied, reproduced, distributed,
9 displayed, or created derivative works from”; and “All Documents submitted by
10 [Plaintiff] to the U.S. Copyright Office in connection with [Plaintiff’s] application for
11 copyright registration number Pau 4-279-489, including but not limited to the deposit
12 copies of [Plaintiff’s] works. (See AMF ¶¶ 55-56 [RFPs 75, 76, and 93]). Plaintiff has
13 not produced these documents or responded to these discovery requests. (Ellena Decl.,
14 ¶ 10). And in particular, Plaintiff has not produced deposit copies of his copyrighted
15 work. (Ellena Decl., ¶ 12). This additional discovery is necessary to identify the
16 contents of the registered audiovisual work as well as the basis for Plaintiff’s claims
17 related to the 850 animation files allegedly created using Rokoko’s motion capture
18 technology. Plaintiff’s uncorroborated “say so” that he owns copyrights in the
19 animation files at issue is not competent evidence that he is entitled to summary
20 judgment.

21 **D. Plaintiff Fails To Meet His Burden To Show Rokoko “Copied”**
22 **Plaintiff’s Work; At The Very Least There Are Triable Issues Of Fact.**

23 Not only does Plaintiff fail to demonstrate ownership of a valid copyright
24 protecting the works (or aspects thereof) that Plaintiff contends were copied, Plaintiff
25 fails to demonstrate with evidence that Rokoko actually copied these works. At the
26 very least, there are triable issues of fact that preclude that grant of partial summary
27 judgment.

28

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1 The “copying” prong of a copyright infringement claim is “bifurcate[d]. . . into
2 two distinct components: copying and unlawful appropriation.” *Woodland v. Hill*, 136
3 F.4th 1199, 1206 (9th Cir. 2025) (citation modified). Put differently, “[t]he second
4 prong contains two separate components: ‘copying’ (or ‘factual copying’) and
5 illicit copying (or ‘unlawful appropriation’).” *Biani v. Showtime Networks, Inc.*, 153
6 F.4th 957, 962 (9th Cir. 2025). “Without copying, there is no copyright violation
7 because, unlike in the patent context, copyright law does not grant authors a monopoly
8 on protected works.” *Woodland*, 136 F.4th at 1206. While Plaintiff’s theory is not
9 entirely clear, it appears that Plaintiff’s contention is that Rokoko engaged in infringing
10 copying by either (i) storing Plaintiff’s animation files on its servers, or (ii) sublicensing
11 Plaintiff’s animation files to third-parties and using them to train AI models. Plaintiff
12 fails to make a prima facie case (or at least there are triable issues of fact) for either
13 theory.

14 1. *Plaintiff—Not Rokoko—Caused The Copying.*

15 To the extent Plaintiff’s contention is that Rokoko infringed on Plaintiff’s
16 copyright by storing Plaintiff’s animation files on its servers, Plaintiff fails to
17 demonstrate factual (let alone illicit) copying. As a preliminary matter, user data is not
18 stored on a Rokoko server. (AMF ¶ 25). Rokoko instead contracts with Amazon Web
19 Services to provide cloud storage to its users. (*Id.*) Furthermore, as discussed above,
20 Rokoko Studio functions by translating the motion capture data supplied by the user
21 wearing the motion capture hardware into an animation file, which is then automatically
22 uploaded to the cloud in addition to being stored locally on the user’s computer. (AMF
23 ¶¶ 17-21). This can only occur if the user *voluntarily chooses* to create an animation
24 using Rokoko Studio. Thus, if Plaintiff’s contention is that the transfer of the user-
25 generated animation data from the user’s local hard drive to the cloud constitutes the
26 infringing “copying,” then it was Plaintiff—not Rokoko—that engaged in the act of
27 copying. That defeats Plaintiff’s claim because copyright infringement requires proof
28 of “copying *by the defendant.*” *Kelly v. Arriba Soft Corp.*, 336 F.3d 811, 817 (9th Cir.

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1 2003) (emphasis added). Put differently, a copyright infringement claim requires “that
2 the defendant *cause* the copying.” *Fox Broad. Co. v. Dish Network L.L.C.*, 747 F.3d
3 1060, 1074 (9th Cir. 2014) (emphasis added).

4 To that end, the Ninth Circuit has held that “operating a system used to make
5 copies at the user’s command does not mean that the system operator, rather than the
6 user, caused copies to be made.” *Id.* For that reason, where a “program creates the
7 copy only in response to the user’s command,” the program operator cannot be liable
8 for copyright infringement. *Id.*; *see also Religious Tech. Ctr. v. Netcom On-Line*
9 *Commc’n Servs., Inc.*, 907 F. Supp. 1361, 1371 (N.D. Cal. 1995) (“storage on a
10 defendant’s system of infringing copies and retransmission to other servers is not a
11 direct infringement”). That is precisely the circumstance here. Rokoko Studio
12 transmits a user’s data to the cloud upon the user’s command, *i.e.*, when the user logs
13 into Rokoko Studio and begins recording motion capture data with Rokoko’s hardware.
14 (AMF ¶¶ 17-21). And given that the cloud-storage function is a major selling point of
15 Rokoko Studio and that platform itself has an indicator that shows when and what
16 information is being synced or uploaded to the cloud, Plaintiff was undoubtedly aware
17 that this is how Rokoko Studio functions. (AMF ¶¶ 22-23). Accordingly, Plaintiff—
18 not Rokoko—is the cause of the purported copying.

19 2. *Rokoko Did Not Sublicense Plaintiff’s Data Or Use It For AI-*
20 *Training.*

21 Plaintiff baldly asserts—without any factual or evidentiary support—that
22 Rokoko “admits” to “cultivating their ‘motion dataset’ which they license to third
23 parties [and] training machine learning/generative AI models.” Plaintiff provides
24 absolutely no factual or evidentiary support for this assertion, which is plainly
25 insufficient on summary judgment. And in any event, the reality is that Rokoko has
26 never sublicensed Plaintiff’s data and Plaintiff’s data is not part of any of Rokoko’s
27 generative AI or motion capture products. Overby Decl., ¶ 20. For that reason,
28 summary judgment must be denied.

3. *Rokoko Has A License To Use Plaintiff’s Intellectual Property.*

While there is no evidence that Rokoko engaged in copying of Plaintiff’s copyrighted works, or that Rokoko sublicensed or otherwise used Plaintiff’s data, Rokoko nevertheless had a license to do so, which Plaintiff has agreed to. (AMF ¶ 31). That is further reason why summary judgment must be denied.

It is well-settled that “[t]he existence of a license creates an affirmative defense to a claim of copyright infringement.” *Worldwide Church of God v. Phila. Church of God, Inc.*, 227 F.3d 1110, 1114 (9th Cir. 2000). Here, the evidence shows that Rokoko had a license to use Plaintiff’s data, including by sublicensing it to third parties.

To start, Plaintiff admits that he agreed to Rokoko’s 2020 and 2022 Terms. Both of those versions of the terms of use expressly grant Rokoko permission to use and collect Plaintiff’s data. More specifically, the 2020 Terms provide that Rokoko “may collect and use technical data” and the 2022 Terms provide that Rokoko “may collect and use (i) User Content,” including the content created and generated by Plaintiff with Rokoko Studio. (AMF ¶¶ 33-35). Thus, to the extent Plaintiff’s contention is that Rokoko infringed on his copyright by copying his data (which it did not), Rokoko had an express license to do so and Plaintiff cannot pursue a copyright infringement claim on that theory.

And while Plaintiff has previously taken the position that he is not bound by Rokoko’s 2025 Terms because he stopped using Rokoko Studio in 2024, that position has now been revealed to be utterly false. In direct contradiction to Plaintiff’s prior representations, he has repeatedly used Rokoko Studio since the March 2025 Terms became effective, including during the pendency of this action. (AMF ¶ 30). Indeed, on December 25, 2025, Plaintiff utilized Rokoko Studio to open a scene he had created in Rokoko Studio, and on December 27, 2025, Plaintiff used Rokoko Studio to search Rokoko’s Motion Capture Library. (*Id.*) And on May 7, 2025, just weeks before Plaintiff initiated this lawsuit, Plaintiff created scenes in Rokoko Studio over the course of 3.5 hours. (*Id.*) By continuing to use Rokoko Studio, Plaintiff indisputably accepted

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1 the 2025 Terms. (AMF ¶ 38). That is because any time Rokoko’s terms of use are
2 updated, a window pops up on the user’s computer screen containing the most recent
3 terms that the user must accept in order to continue using Rokoko Studio. (AMF ¶ 26).
4 In other words, there is no way to access Rokoko Studio without agreeing to the most
5 recent terms once they are updated.

6 By accepting the 2025 Terms, Plaintiff expressly granted Rokoko the right “to
7 sub-license [his data] to third parties in an anonymized form never to be redistributed
8 in its original form strictly for the purpose of developing and improving their services
9 or products.” (AMF ¶ 40). Thus, to the extent Plaintiff’s contention is that Rokoko
10 infringed on his copyrights by sub-licensing its data to third parties (which it did not),
11 Rokoko had an express license to do so and Plaintiff cannot pursue a copyright
12 infringement claim based on that theory.

13 4. *Additional Discovery Is Necessary To Confirm That Rokoko Did Not*
14 *Copy Plaintiff’s Works, And Alternatively, That It Had A License To*
15 *Do So.*

16 In this case, Plaintiff is acting as his own expert. That is objectionable for all the
17 reasons described in Rokoko’s concurrently filed evidentiary objections. And as
18 detailed in the motion, Plaintiff relies almost entirely on his own expert report to support
19 his contention that Rokoko copied Plaintiff’s works in violation of his copyright
20 interests. Having only recently been served with this purported expert report, Rokoko
21 has not had the opportunity to take the discovery necessary to rebut it. (Ellena Decl., ¶
22 11). To that end, Rokoko has served Requests for Production of Documents directed at
23 testing Plaintiff’s expert report. (AMF ¶ 56; Ellena Decl., ¶ 9). Once those documents
24 are received and reviewed, and further discovery is had, Rokoko intends to take
25 Plaintiff’s deposition—in his expert capacity—to further test the conclusions of the
26 expert report. (Ellena Decl., ¶ 11). Indeed, Rule 26(b)(4)(A) expressly gives parties
27 the right to take the deposition of opposing experts.

28

1 Further fact discovery is also likely to confirm that Plaintiff indeed agreed to the
2 2025 Terms and that Plaintiff understood that by using Rokoko Studio, his animation
3 files would automatically be uploaded to the cloud. Given that written and document
4 discovery is far from complete, Rokoko has not yet noticed Plaintiff’s deposition—in
5 his lay witness capacity. (Ellena Decl., ¶ 11). Rokoko intends to take Plaintiff’s
6 deposition once fact discovery is near completion, and that deposition is likely to further
7 bolster Rokoko’s defenses.

8 **V. CONCLUSION**

9 For the reasons stated herein, Plaintiff’s Motion should be denied.

10
11 DATED: April 27, 2026

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12
13 By: /s/ Katherine J. Ellena
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant Rokoko Electronics, certifies that this brief contains 6,659 words, which complies with the word limit of L.R. 11-6.2.

DATED: April 27, 2026

/s/ Katherine J. Ellena
Katherine J. Ellena

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