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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]

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

Date: July 6, 2026
Time: 1:30 p.m.
Place: Dept. 5D

[Concurrently Filed With [Proposed]
Order]

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

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

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

10 This Motion is made following the meet and confer discussion between counsel
11 for Rokoko and Plaintiff on April 24, 2026 and pursuant to the Court’s April 9, 2026
12 Order (ECF No. 165).

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

20 DATED: May 4, 2026

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22 By: /s/ Katherine J. Ellena
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Michael Galibois (*pro hac vice*)
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25 *Attorneys for Defendant*
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TABLE OF CONTENTS

	Page
1	
2	
3	
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
4 I. INTRODUCTION	1
5 II. RELEVANT FACTUAL BACKGROUND	2
6 III. ARGUMENT.....	2
7 A. Legal Standards.....	2
8 1. Federal Rule of Civil Procedure 9(b).....	2
9 2. Federal Rule of Civil Procedure 12(b)(6).....	3
10 B. Plaintiff’s Tortious Interference Cause Of Action Fails As A	
11 Matter Of Law.....	3
12 1. Plaintiff Fails To Plead Rokoko’s Knowledge Of Newly	
13 Alleged Relationships.....	4
14 2. Plaintiff Fails To Plead An Intentional Act.....	4
15 3. Plaintiff Fails To Plead An Independently Wrongful Act.....	6
16 4. Plaintiff Fails To Plausibly Plead Actual Disruption Of	
17 His Relationships And Economic Harm.....	10
18 C. Plaintiff’s RICO Claim Fails As A Matter Of Law And Must	
19 Be Dismissed With Prejudice.	11
20 1. Plaintiff Failed To Plead An “Enterprise.”	12
21 2. Plaintiff’s “Wire Fraud” Allegations Remain Insufficient.....	13
22 3. Plaintiff’s Computer Fraud Predicates Are Legally	
23 Deficient.....	15
24 4. Pattern Allegations Are Conclusory.....	16
25 5. Injury And Proximate Causation Are Speculative.	17
26 D. Plaintiff’s Jury Demand Is Untimely And Should Be Stricken.....	19
27 E. Any Further Chance To Amend Would Be Futile.....	20
28 F. Plaintiff’s SAC Contains Irrelevant and Improper Material That	
Should Be Struck.....	20
IV. CONCLUSION	21

REED SMITH LLP
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TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3

4

5 *AccuImage Diagnostics Corp v. Terarecon, Inc.*,

6 260 F. Supp. 2d 941 (N.D. Cal. 2003)..... 10

7 *AK Futures v. Limitless Trading Co., LLC*,

8 2021 U.S. Dist. LEXIS 219445 (C.D. Cal. Oct. 6, 2021) 8

9 *Alan Neuman Prods., Inc. v. Albright*,

10 862 F.2d 1388 (9th Cir. 1988) 14

11 *Anza v. Ideal Steel Supply Corp.*,

12 547 U.S. 451 (2006)..... 18

13 *Bell Atl. Corp. v. Twombly*,

14 550 U.S. 544 (2007)..... 3, 19

15 *Bui-Ford v. Tesla, Inc.*,

16 2024 U.S. Dist. LEXIS 28767 (N.D. Cal. Feb. 20, 2024)..... 16

17 *Charney v. Standard General, L.P.*,

18 10 Cal. App. 5th 149 (Cal. Ct. App. 2017)..... 10

19 *Chaset v. Fleer/Skybox Int’l, LP*,

20 300 F.3d 1083 (9th Cir. 2002) 12, 18, 19

21 *Cnty. of Marin v. Deloitte Consulting LLP*,

22 836 F. Supp. 2d 1030 (N.D. Cal. 2011)..... 15

23 *Comm. to Protect Our Agric. Water v. Occidental Oil & Gas Corp.*,

24 235 F. Supp. 3d 1132 (E.D. Cal. 2017) 12, 13, 14, 15

25 *Crown Imports, LLC v. Superior Court*,

26 223 Cal. App. 4th 1395 (Cal. Ct. App. 2014)..... 4

27 *Daniels-Hall v. National Educ. Ass’n*,

28 629 F.3d 992 (9th Cir. 2010) 3, 6, 9

Davidson v. Apple, Inc.,

2017 U.S. Dist. LEXIS 36524 (N.D. Cal. Mar. 14, 2017) 3

REED SMITH LLP
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REED SMITH LLP
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1 *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*,
 2 11 Cal. 4th 376 (Cal. 1995)4

3 *Deon Best v. Janice Smalls Combs*,
 4 2025 U.S. Dist. LEXIS 186343 (C.D. Cal. Sept. 19, 2025).....3

5 *Edwards v. Marin Park, Inc.*,
 6 356 F.3d 1058 (9th Cir. 2004) 12

7 *Go Daddy Operating Co., LLC v. Ghaznavi*,
 8 2018 U.S. Dist. LEXIS 33002 (C.D. Cal. Feb. 28, 2018)4, 5

9 *H.J. Inc. v. Nw. Bell Tel. Co.*,
 10 492 U.S. 229 (1989)..... 12, 17

11 *Hemi Grp., LLC v. City of New York*,
 12 559 U.S. 1 (2010)..... 17

13 *Holmes v. Sec. Investor Prot. Corp.*,
 14 503 U.S. 258 (1992)..... 18

15 *Holstein v. Chen*,
 16 2018 Cal. Super. LEXIS 77566 (Cal. Super. Ct. July 16, 2018).....9

17 *Jacobson v. Schwarzenegger*,
 18 357 F. Supp. 2d 1198 (C.D. Cal. 2004).....8

19 *Jones v. City of Los Angeles*,
 20 2022 U.S. Dist. LEXIS 91709 (C.D. Cal. Feb. 16, 2022)21

21 *KM Strategic Mgmt., LLC v. Am. Cas. Co. of Reading, PA*,
 22 156 F. Supp. 3d 1154 (C.D. Cal. 2015).....8

23 *Korea Supply Co. v. Lockheed Martin Corp.*,
 24 29 Cal. 4th 113 (Cal. 2003)6

25 *LiMandri v. Judkins*,
 26 52 Cal.App.4th 326 (Cal. Ct. App. 1997).....7

27 *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*,
 28 431 F.3d 353 (9th Cir. 2005) 11

Luna Distrib. LLC v. Stoli Grp. United States, LLC,
 2018 U.S. Dist. LEXIS 233024 (C.D. Cal. July 10, 2018) 11

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware

1 *Lutz v. Glendale Union High School,*
 2 403 F.3d 1061 (9th Cir. 2005)20

3 *Manzarek v. St. Paul Fire & Marine Ins. Co.,*
 4 519 F.3d 1025 (9th Cir. 2008)3

5 *Margolis v. Apple Inc.,*
 6 743 F. Supp. 3d 1124 (N.D. Cal. 2024)..... 16, 17

7 *Montanez v. Pepsico, Inc.,*
 8 784 F. Supp. 3d 1369 (C.D. Cal. 2025).....8

9 *name.space, Inc. v. Internet Corp. for Assigned Names &*
 10 *Numbers*, No. CV 12-8676 PA, 2013 WL 2151478 (C.D. Cal. Mar. 4,
 2013) (Anderson, J.), *aff'd*, 795 F.3d 1124 (9th Cir. 2015)6

11 *Odom v. Microsoft Corp.,*
 12 486 F.3d 541 (9th Cir. 2007) 12

13 *Orr v. Bank of America, NT & SA,*
 14 285 F.3d 764 (9th Cir. 2002) 14

15 *Oscar v. Univ. Students Co-op. Ass'n,*
 16 965 F.2d 783 (9th Cir. 1992) (overruled on other grounds)..... 18, 19

17 *Pac. Steel Grp. v. Com. Metals Co.,*
 18 600 F. Supp. 3d 1056 (N.D. Cal. 2022).....4

19 *Pacific Fisheries Corp. v. HIH Cas. & Gen. Ins., Ltd.,*
 20 239 F.3d 1000 (9th Cir. 2001)20

21 *Patel v. Robinson,*
 22 2020 U.S. Dist. LEXIS 17262 (C.D. Cal. Jan. 9, 2020).....21

23 *Perlow v. Mann,*
 24 2013 U.S. Dist. LEXIS 151860 (C.D. Cal. Oct. 22, 2013)8

25 *Price v. Pinnacle Brands, Inc.*
 26 138 F.3d 602 (5th Cir. 1998) 19

27 *Ramona Manor Convalescent Hosp. v. Care Enterprises,*
 28 177 Cal.App.3d 1120 (Cal. Ct. App. 1986).....5, 6

REED SMITH LLP
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1 *Reves v. Ernst & Young,*
 2 507 U.S. 170 (1993)..... 13

3 *Rights Enforcement Corp. v. Feemster,*
 4 2017 U.S. Dist. LEXIS 221894 (C.D. Cal. April 10, 2017)..... 7

5 *Roy Allan Slurry Seal, Inc. v. Am. Asphalt S., Inc.,*
 6 2 Cal. 5th 505 (2017)..... 11

7 *Spindler v. City of Los Angeles,*
 8 2018 U.S. Dist. LEXIS 228592 (C.D. Cal. April 17, 2018)..... 10

9 *Spotlight Ticket Mgmt., Inc. v. Concierge Live LLC,*
 10 2024 U.S. Dist. LEXIS 158030 (C.D. Cal. Aug. 30, 2024) 7

11 *Steckman v. Hart Brewing, Inc.,*
 12 143 F.3d 1293 (9th Cir. 1998) 5

13 *Swartz v. KPMG LLP,*
 14 476 F.3d 756 (9th Cir. 2007) 3

15 *Sybersound Records, Inc., v. UAV Corp.,*
 16 517 F.3d 1137 (9th Cir. 2008) 10

17 *Ebeid ex rel. U.S. v. Lungwitz,*
 18 616 F.3d 993 (9th Cir. 2010) 3

19 *UMG Recordings, Inc. v. Glob. Eagle Ent., Inc.,*
 20 117 F. Supp. 3d 1092 (C.D. Cal. 2015)..... 7

21 *Vascular Imaging Prof'ls, Inc. v. Digirad Corp.,*
 22 401 F. Supp. 3d 1005 (S.D. Cal. 2019) 10

23 *Vess v. Ciba-Geigy Corp. USA,*
 24 317 F.3d 1097 (9th Cir. 2003) 14

25 *Walter v. Drayson,*
 26 538 F.3d 1244 (9th Cir. 2008) 13

27 *Wong v. Jing,*
 28 189 Cal.App.4th 1354 (Cal. Ct. App. 2010)..... 8

1 **Statutes**
2 18 U.S.C. § 1961(4) 12

3 **Rules**
4
5 Fed. R. Civ. P. 9(b) 2
6 Fed. R. Civ. P. 12(b)(6) 3
7 Fed. R. Civ. P. 12(f) 21

8 **Other Authorities**
9
10 <https://support.rokoko.com/hc/en-us/articles/14897573141009-Rokoko-Studio-Offline-Mode-Cloud-Syncing> 14
11 <https://www.youtube.com/watch?v=j8Fk9Foe8o8> 8

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court’s April 9, 2026 Order (ECF No. 165) dismissing Plaintiff Matthew Walsh’s (“Plaintiff”) first and third causes of action in his First Amended Complaint (“FAC”) provided Plaintiff with “a final opportunity” to cure his pleading deficiencies. *Id.* at 6:9-10. As in his FAC, Plaintiff’s Second Amended Complaint (“SAC”) fails to allege any new or different facts—or allege the existing facts with the required precision—to cure the legal deficiencies identified by the Court. Indeed, the SAC still remains a morass of alleged “facts” that Plaintiff hopes the Court will accept as evidence of some evil scheme by Rokoko. Plaintiff cannot plead such a scheme and his tortious interference and RICO claims must be dismissed with prejudice for the reasons explained herein.

First, Plaintiff fails to sufficiently plead that Rokoko intentionally acted to disrupt his economic relationships when it allegedly deployed a general “firmware update” and withheld replacement parts. Plaintiff’s newly pled theory that Rokoko “defamed Plaintiff to an entertainment/game-industry podcast” fares no better. Plaintiff cannot plead a cognizable independently wrongful act by Rokoko, and his claimed damages are far too conclusory and speculative to be actionable.

Second, Plaintiff’s RICO cause of action fails because it fails to satisfy the heightened pleading standards under Fed. R. Civ. P. 9(b), relies on conclusory enterprise and pattern allegations, fails to adequately allege computer fraud, and pleads injuries that are speculative and not proximately caused by any predicate act.

Third, Plaintiff’s SAC reasserts a jury demand under Fed. R. Civ. P. 39(b) that is foreclosed by this Court’s prior order striking the FAC’s jury demand under Rule 38(d). ECF No. 165, 13-14.

Accordingly, because Plaintiff has failed to sufficiently plead his claims for

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1 tortious interference and RICO, the Court should dismiss those claims with prejudice.¹

2 **II. RELEVANT FACTUAL BACKGROUND**

3 Rokoko is a developer of motion capture and animation technology products.
4 SAC, 1:15-16. In September and December 2020, Plaintiff, a video game developer,
5 purchased products from Rokoko. *Id.* at 1:12-2:19. The action arises out of Plaintiff’s
6 displeasure with Rokoko’s products, which he contends have interfered with the
7 development of his video game: “The Next World.” *Id.* at 8:139-146, 11:187-90.

8 Plaintiff initiated this action on May 12, 2025, asserting fourteen causes of action
9 against Rokoko. ECF No. 1-1. On December 22, 2025, the Court granted Rokoko’s
10 motion to dismiss in full, dismissing six causes of action with prejudice and eight causes
11 of action with leave to amend. ECF No. 113. On December 24, 2025, Plaintiff filed his
12 FAC, asserting five causes of action. ECF No. 115-1. On April 9, 2026, the Court
13 dismissed four of Plaintiff’s claims, providing Plaintiff with one last opportunity to
14 plead his claims for tortious interference and RICO. ECF No. 165.

15 On April 17, 2026, Plaintiff filed his SAC, asserting causes of action for (1)
16 tortious interference with prospective contract; (2) intellectual property infringement;
17 and (3) a RICO cause of action. *See generally* SAC. The SAC suffers from the same
18 deficiencies as Plaintiff’s previous complaints and alleges that Rokoko has intentionally
19 disrupted Plaintiff’s economic relationships, committed wire fraud, and engaged in
20 racketeering. *See generally* SAC.

21 **III. ARGUMENT**

22 **A. Legal Standards.**

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

24 Rule 9(b) requires that claims grounded in fraud “state with particularity the
25 circumstances constituting fraud.” Fed. R. Civ. P. 9(b). “[C]laims sounding in fraud
26

27 ¹ Rokoko’s Motion does not address the second cause of action in the SAC (“Intellectual Property
28 Infringement”), which is currently the subject of Plaintiff’s motion for summary judgment (ECF No. 167) and which Rokoko has opposed (ECF No. 173), because it is outside this Court’s leave to amend.

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1 must allege ‘an account of the time, place, and specific content of the false
2 representations as well as the identities of the parties to the misrepresentations.’”
3 *Davidson v. Apple, Inc.*, 2017 U.S. Dist. LEXIS 36524, at *11-12 (N.D. Cal. Mar. 14,
4 2017) (quoting *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007)). The plaintiff
5 must also set forth “what is false or misleading about a statement, and why it is false.”
6 *Id.* (quoting *Ebeid ex rel. U.S. v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010)). This
7 heightened pleading standard applies to RICO claims. *Deon Best v. Janice Smalls*
8 *Combs*, 2025 U.S. Dist. LEXIS 186343, at *14 (C.D. Cal. Sept. 19, 2025).

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

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

16 In ruling on a 12(b)(6) motion, “courts are not bound to accept as true a legal
17 conclusion couched as a factual allegation,” *Id.* (citation omitted), nor do courts have to
18 “accept as true allegations...that are merely conclusory, unwarranted deductions of fact,
19 or unreasonable inferences.” *Daniels-Hall v. National Educ. Ass’n*, 629 F.3d 992, 998
20 (9th Cir. 2010) (citing *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025,
21 1031 (9th Cir. 2008)).

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

24 “The elements of a claim of interference with prospective economic advantage
25 are: (1) an economic relationship between the plaintiff and some third party, with the
26 probability of future economic benefit to the plaintiff; (2) the defendant’s knowledge of
27 the relationship; (3) intentional [or negligent] acts on the part of the defendant designed
28 to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic

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1 harm to the plaintiff proximately caused by the acts of the defendant.” *Crown Imports,*
2 *LLC v. Superior Court*, 223 Cal. App. 4th 1395, 1404 (Cal. Ct. App. 2014). Plaintiff
3 must also establish that Rokoko engaged in an independently wrongful act. *See Della*
4 *Penna v. Toyota Motor Sales, U.S.A., Inc.*, 11 Cal. 4th 376, 393 (Cal. 1995). “An act is
5 independently ‘wrongful’ if it is unlawful, *i.e.*, ‘if it is proscribed by some
6 constitutional, statutory, regulatory, common law, or other determinable legal
7 standard.’” *Pac. Steel Grp. v. Com. Metals Co.*, 600 F. Supp. 3d 1056, 1081 (N.D. Cal.
8 2022). This Court’s prior Order specifically held the FAC failed to (1) demonstrate the
9 requisite intent by Rokoko or (2) allege that Rokoko had committed an independently
10 wrongful act. ECF No. 165, 5-6. The SAC fares no better.

11 **1. Plaintiff Fails To Plead Rokoko’s Knowledge Of Newly Alleged**
12 **Relationships.**

13 As to the first and second elements, Plaintiff now changes his theory as to which
14 contracts were purportedly interrupted by Rokoko’s acts, claiming: “this is about the
15 cast, crew, contractors and their contracts which suffered most”—a stark difference
16 from his previous contention that the principle interference was with his purported
17 contracts with Nintendo and Sony. *Compare* SAC, 8:150-51 *with* ECF No. 115-1.
18 Plaintiff further alleges that the purported disruption “prevented the release of two
19 books... and clothing merchandise” and impacted his relationships with parties in
20 connection with a “potential TV streaming series.” SAC, 16:264-68. Plaintiff has not
21 pled Rokoko was aware of any purported contracts with his “cast, crew, [and]
22 contractors,” let alone any contracts for a TV series, books, or merchandising.

23 **2. Plaintiff Fails To Plead An Intentional Act.**

24 Plaintiff’s SAC also fails to plead “either specific intent or ‘knowledge that
25 [defendant’s] actions were certain or substantially certain to interfere with plaintiff’s
26 business expectancy.’” *Go Daddy Operating Co., LLC v. Ghaznavi*, 2018 U.S. Dist.
27 LEXIS 33002, at *29 (C.D. Cal. Feb. 28, 2018) (citations omitted). “It is not enough
28 that one has been prevented from obtaining performance of a contract as a result of the

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1 actor’s conduct. . . . Only when the actor’s conduct is intended to affect a specific person
2 is the actor subject to liability under this rule.” *Id.* at 27 (citing *Ramona Manor*
3 *Convalescent Hosp. v. Care Enterprises*, 177 Cal.App.3d 1120, 1133 (Cal. Ct. App.
4 1986)). This Court’s prior Order held that Plaintiff’s FAC failed to “plausibly allege
5 that Rokoko acted with the intent or knowledge that its firmware update would affect
6 Walsh’s potential relationships with Nintendo and others.” ECF No. 165, 5:20-21.

7 First, the Court is “not required to accept as true conclusory allegations which are
8 contradicted by documents referred to in the complaint.” *Steckman v. Hart Brewing,*
9 *Inc.*, 143 F.3d 1293, 1295-96 (9th Cir. 1998). The SAC’s exhibits directly contradict
10 Plaintiff’s claims his prospective relationships were specifically targeted. Exhibits 9 and
11 14 purportedly show pages on Rokoko’s website addressing Plaintiff’s alleged issue.
12 SAC, Exs. 9, 14. Exhibit 14 explicitly states it is relevant to “anyone” who connected
13 their Smartsuit Pro I or II to Rokoko Studio and is now having sensor issues, as Plaintiff
14 claims he did. *Id.* at Ex. 14. At most, Plaintiff’s exhibits demonstrate that others were
15 similarly afflicted by a sensor issue.² They certainly do not plausibly support the
16 inference that an alleged firmware update was released with the intent to, or knowledge
17 that it would, impact Plaintiff’s economic relationships.

18 Even if Plaintiff’s evidence did not disprove his assertions, the SAC again fails
19 to allege that Rokoko intentionally (or negligently) acted in a way that was designed to
20 disrupt Plaintiff’s relationships. Plaintiff alleges that Rokoko identified him as a
21 “‘legacy’ user” but does not provide any evidence to support this assertion or
22 explanation as to how such an allegation supports an inference that Rokoko acted with
23 the intent to harm Plaintiff only. SAC, 10:182-84.³ Plaintiff’s statement that Rokoko

24 _____
25 ² Other contradictory exhibits include: (a) Exhibit 58 (Plaintiff contends that “all updates are optional”
26 but the exhibit clearly: “[t]here will be some cases where an update will be mandatory”) and (b) Exhibit
27 27 (Plaintiff claims Rokoko holds users’ data “hostage” and forces users to pay to retrieve it, but the
28 language identified clearly states that all users can export data in FBX format).

³ The footnotes in the SAC are replete with quotes that do not appear in any supporting exhibit. For
example, none of Plaintiff’s exhibits contain the language that is quoted in footnotes 1, 4, 5, 7, or 8,
and there is no way to verify their source or accuracy. Footnote 6 refers to two RFAs *Rokoko* served
on *Plaintiff*, which, to date, he has not responded to.

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1 “therefore knew” is conclusory and unsupported, and the Court is not required to accept
2 it as true. *Daniels-Hall*, 629 F.3d at 998 (courts do not have to accept “conclusory,
3 unwarranted deductions of fact, or unreasonable inferences.”).

4 Additionally, Plaintiff does not make any showing that the firmware update was
5 released specifically to affect his videogame production. *See Name.Space, Inc. v.*
6 *Internet Corp. for Assigned Names & Nos.*, 2013 U.S. Dist. LEXIS 72790 , at *25 (C.D.
7 Cal. Mar. 4, 2013), *aff’d*, 795 F.3d 1124 (9th Cir. 2015) (dismissing tortious interference
8 claim where plaintiff failed to allege “any intentional actions” by defendant that were
9 “designed to disrupt” plaintiff’s alleged economic relationships or any “evidentiary
10 facts of actual disruption and resulting economic harm.”). These bare allegations do not
11 show that Rokoko’s conduct was intended to harm Plaintiff as required. *Ramona*, 177
12 Cal.App.3d at 1133.

13 At most, Plaintiff can allege Rokoko released a “firmware” update that interfered
14 with his game development. SAC, 8:139-146. A general firmware update does not
15 sufficiently show Rokoko’s intent to interfere with or disrupt Plaintiff’s relationships.

16 **3. Plaintiff Fails To Plead An Independently Wrongful Act.**

17 Plaintiff also fails to plausibly plead an independently wrongful act. “[A]n act is
18 independently wrongful if it is unlawful, that is, if it is proscribed by some
19 constitutional, statutory, regulatory, common law, or other determinable legal
20 standard.” *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 113, 1159 (Cal.
21 2003).

22 First, Plaintiff asserts that Rokoko’s alleged copyright infringement under 17
23 U.S.C. § 501 satisfies the independently wrongful act requirement. SAC, 14:229-30.
24 However, an independently wrongful act must be related to the interference itself. *See*
25 *Rights Enforcement Corp. v. Feemster*, 2017 U.S. Dist. LEXIS 221894, at *6 (C.D. Cal.
26 April 10, 2017) (citing *LiMandri v. Judkins*, 52 Cal.App.4th 326, 342 (Cal. Ct. App.
27 1997)) (“It is insufficient to allege the defendant engaged in tortious conduct . . . only
28 tangentially related to the conduct constituting the actual interference.”). The crux of

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1 Plaintiff’s claim alleges Rokoko “released a firmware update knowing it would impact
2 Plaintiff.” SAC, 10:181. Plaintiff does not explain how the alleged copyright
3 infringement interfered with his prospective business relationships. Accordingly, the
4 alleged infringement cannot serve as an independently wrongful act sufficient to
5 support Plaintiff’s tortious interference claim.

6 Second, Plaintiff pleads that Rokoko violated 18 U.S.C. § 1030 “by knowingly
7 and without authorization transmitting a code or command (firmware) that caused
8 intentional damage and rendered the hardware inoperable.” SAC, 14:231-36. “Fraud
9 qualifies as an independently wrongful act, but only if it adequately pled.” *UMG*
10 *Recordings, Inc. v. Glob. Eagle Ent., Inc.*, 117 F. Supp. 3d 1092, 1117 (C.D. Cal. 2015);
11 *see also Spotlight Ticket Mgmt., Inc. v. Concierge Live LLC*, 2024 U.S. Dist. LEXIS
12 158030, at *27-28 (C.D. Cal. Aug. 30, 2024) (The court dismissed a tortious
13 interference claim because it “rests on the same false advertising claims that are
14 deficient, this claim cannot stand independently.”). As discussed below, Plaintiff has
15 not adequately pled his RICO cause of action under Fed. R. Civ. P. 9(b), and thus failed
16 to allege 18 U.S.C. § 1030 as the basis for his tortious interference claim.

17 Third, Plaintiff vaguely alleges that Rokoko’s acts violate “unfair business
18 practices under California law.” SAC, 14:237. The Court has already dismissed
19 Plaintiff’s unfair business practices cause of action with prejudice. ECF No. 113, 10:10-
20 21. As Plaintiff is unable to state a claim for unfair business practices, it is insufficient
21 to support his tortious interference claim.⁴

22 Fourth, Plaintiff asserts that Rokoko conspired with and defamed him to a third
23 party, Corridor Digital (“Corridor”).⁵ SAC, 14:238:15:246. The SAC fails to plausibly
24 plead (and ultimately prove) a claim for defamation.⁶ SAC, 14:239. *See Montanez v.*

25 _____
26 ⁴ Plaintiff’s unfair business practices claim also fails for lack of evidence demonstrating an impact
27 on Plaintiff’s prospective relationships.
28 ⁵ The video shown in Ex. 63 can be accessed here: <https://www.youtube.com/watch?v=j8Fk9Foe8o8>.
⁶ The SAC’s reliance on Cal. Civ. Code § 45 is inapplicable as in California “[I]ibel is a false and
unprivileged publication by writing or other fixed representation to the eye.” *Perlow v. Mann*, 2013
U.S. Dist. LEXIS 151860, at *12 (C.D. Cal. Oct. 22, 2013). Plaintiff’s allegations relate to a podcast,

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1 *Pepsico, Inc.*, 784 F. Supp. 3d 1369, 1383 (C.D. Cal. 2025) (dismissing a tortious
2 interference claim alleging wrongful conduct in the form of defamation where the
3 plaintiff had failed to adequately plead the elements of defamation).

4 To prevail on a claim for defamation under Cal. Civ. Code § 46(3), Plaintiff must
5 plead and prove ““(1) a publication that is (2) false, (3) defamatory, (4) unprivileged,
6 and (5) has a natural tendency to injure or causes special damage.”” *KM Strategic*
7 *Mgmt., LLC v. Am. Cas. Co. of Reading, PA*, 156 F. Supp. 3d 1154, 1166 (C.D. Cal.
8 2015) (citing *Wong v. Jing*, 189 Cal.App.4th 1354, 1369 (Cal. Ct. App. 2010)).
9 “[A]lthough a plaintiff need not plead the allegedly defamatory statement verbatim, the
10 allegedly defamatory statement must be specifically identified, and the plaintiff must
11 plead the substance of the statement.” *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d
12 1198, 1216 (C.D. Cal. 2004) (superseded by statute on other grounds). “Even under
13 liberal federal pleading standards, ‘general allegations of the defamatory statements’
14 which do not identify the substance of what was said are insufficient.” *Id.* Plaintiff fails
15 to plead any specific statements that he alleges are slanderous. Instead, he alleges third
16 party ***Corridor Digital*** – not Rokoko – “published false and damaging statements about
17 Plaintiff, his claims, his evidence, and his mental stability.” *Id.* at 14:242-44. These
18 general statements are exactly the kind contemplated in *Jacobson*; see also *AK Futures*
19 *v. Limitless Trading Co., LLC*, 2021 U.S. Dist. LEXIS 219445, at *12 (C.D. Cal. Oct.
20 6, 2021) (stating “[Plaintiff] cannot rest its claims on unidentified statements that are
21 allegedly defamatory.”).

22 Plaintiff’s defamation claim also fails at the first element, publication. Plaintiff
23 asserts that Corridor, a third party, published a podcast containing defamatory
24 statements about him. SAC, 14:242-44. In California, “[a]n essential element of a
25 plaintiffs’ defamation claim is to establish that the defendant did in fact make the
26 statement alleged to be false.” *Holstein v. Chen*, 2018 Cal. Super. LEXIS 77566, at *3

27 _____
28 which is not a written or other fixed representation. Cal. Civ. Code § 48 is similarly inapplicable as it
does not create a right of action.

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1 (Cal. Super. Ct. July 16, 2018). Conclusory allegations—taken out of context—that
2 Corridor Digital “was in active communication” with Rokoko while the podcast was
3 being recorded are insufficient to state a claim for defamation. SAC, 14:244. The Court
4 is not required to accept allegations as true that require “unwarranted deductions of fact,
5 or unreasonable inferences.” *Daniels-Hall*, 629 F.3d at 998.

6 Further, Plaintiff’s inflammatory claims that Rokoko directed Corridor to discuss
7 the lawsuit are unfounded and unsupported. SAC, 14:238. The podcaster accessed his
8 phone to read a post on Corridor’s Reddit page. *Id.* at Ex. 63. Plaintiff has admitted in
9 a signed declaration submitted to this Court that he made this post. *See* ECF No. 117-1
10 (Corridor “[c]laimed my headline was manipulative and deceptive.”). The podcasters
11 repeatedly state the Reddit post is the basis for their discussion. SAC, Ex. 63. It is clear
12 in listening to the podcast that Plaintiff, not Rokoko, brought the lawsuit to Corridor’s
13 attention.

14 It is also clear the podcasters are not in “active communication with Rokoko live
15 on the air.” *Id.* at 14:244-45. The podcaster uses his phone to read from Plaintiff’s post,
16 not to coordinate with Rokoko. There was also no “admitted direct interaction” one day
17 before the podcast was filmed. *Id.* at 14:240. The podcasters state they filmed a “brand
18 integration” the day before. *Id.* at Ex. 63. That does not lead to the inference the
19 podcasters spoke to anyone at Rokoko the day before, let alone that Rokoko directed
20 them to speak about the Reddit post. Accordingly, the Court need not accept Plaintiff’s
21 baseless contentions his own evidence contradicts. *Daniels-Hall*, 629 F.3d at 998.

22 Additionally, Corridor’s statements cannot form the basis of a defamation claim,
23 as the podcasters clearly do not know Plaintiff and are not asserting facts. “[S]tatements
24 cannot form the basis of a defamation action if they cannot be reasonably interpreted as
25 stating actual facts about an individual. Thus, rhetorical hyperbole, vigorous epithets,
26 lusty and imaginative expressions of contempt and language used in a loose, figurative
27 sense will not support a defamation action.” *Spindler v. City of Los Angeles*, 2018 U.S.
28 Dist. LEXIS 228592, at *34-35 (C.D. Cal. April 17, 2018) (citing *Charney v. Standard*

1 *General, L.P.*, 10 Cal. App. 5th 149, 157 (Cal. Ct. App. 2017)).

2 Because Plaintiff has failed to satisfy the elements of defamation, it cannot
3 constitute an independently wrongful act.

4 **4. Plaintiff Fails To Plausibly Plead Actual Disruption Of His**
5 **Relationships And Economic Harm.**

6 As for the fourth and fifth elements, Plaintiff cannot plausibly plead that his
7 purported relationships were actually disrupted or that he has suffered economic harm
8 *proximately caused by* Rokoko’s actions. *AccuImage Diagnostics Corp v. Terarecon,*
9 *Inc.*, 260 F. Supp. 2d 941, 956 (N.D. Cal. 2003). Speculative allegations concerning
10 actual disruption and economic harm are insufficient to state a claim. *See Sybersound*
11 *Records, Inc., v. UAV Corp.*, 517 F.3d 1137, 1151 (9th Cir. 2008) (affirming dismissal
12 of intentional interference with economic relationship claim where plaintiff’s alleged
13 disruptions were conclusory claiming it “has been harmed because its ongoing business
14 and economic relationships with Customers have been disrupted” and did not plead “for
15 example, that it lost a contract nor that a negotiation with a [c]ustomer failed”); *Vascular*
16 *Imaging Prof’ls, Inc. v. Digirad Corp.*, 401 F. Supp. 3d 1005, 1014 (S.D. Cal. 2019)
17 (general conclusory allegations regarding lost sales, absent well-plead facts in support
18 of these contentions, do not satisfy the pleading requirements for interference with
19 economic relations).

20 Plaintiff vaguely alleges “he was unable to meet critical production milestones
21 for The Next World,” orders could not be fulfilled, his “developer account” was
22 suspended by Sony, and the “disruption” prevented the release of his books and clothing
23 merchandise. SAC, 15:258-16:266. In addition to these highly speculative and
24 conclusory allegations, Plaintiff failed to plead the “firmware update” was the but-for
25 cause of his claimed loss. *See Roy Allan Slurry Seal, Inc. v. Am. Asphalt S., Inc.*, 2 Cal.
26 5th 505, 515 (2017) (“[A] cause of action for tortious interference has been found
27 lacking when either the economic relationship with a third party is too attenuated or the
28 probability of economic benefit too speculative.”).

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1 Additionally, the purported “pre-orders” Plaintiff alleges were in place for his
2 videogame do not form the proper basis for economic harm. SAC, 15:261-62. Plaintiff
3 does not allege a prospective relationship with customers, nor can potential customers
4 be the basis for one. *See Luna Distrib. LLC v. Stoli Grp. United States, LLC*, 2018 U.S.
5 Dist. LEXIS 233024, at *65 (C.D. Cal. July 10, 2018) (citations omitted) (“[F]uture
6 sales are ‘at most a hope for an economic relationship and a desire for future benefit,’
7 and are not sufficient to establish a relationship.). Lost sales are not sufficient to
8 establish economic harm. *Id.* at *66 (“Plaintiff’s alleged injury of ‘lost sales’ and lost
9 placements at retail locations are broad generic statements that do not plausibly support
10 the reasonable probability ‘that the prospective economic advantage would have been
11 realized but for defendant’s interference.’”).

12 Accordingly, Plaintiff’s tortious interference claim fails as a matter of law.

13 **C. Plaintiff’s RICO Claim Fails As A Matter Of Law And Must Be**
14 **Dismissed With Prejudice.**

15 Plaintiff’s RICO cause of action rests and dies on conclusory allegations that
16 Rokoko somehow committed wire and computer fraud. A claim for RICO under 18
17 U.S.C. §1962(c) must specifically plead: “(1) conduct (2) of an enterprise (3) through a
18 pattern (4) of racketeering activity (known as ‘predicate acts’) (5) causing injury to
19 plaintiff’s business or property.” *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*,
20 431 F.3d 353, 361 (9th Cir. 2005). A “pattern” requires predicate acts that are related
21 **and** “amount to or pose a threat of continued criminal activity.” *H.J. Inc. v. Nw. Bell*
22 *Tel. Co.*, 492 U.S. 229, 239 (1989). Plaintiff must demonstrate “concrete financial loss”
23 that is individually and proximately caused by the predicate acts. *Chaset v. Fleer/Skybox*
24 *Int’l, LP*, 300 F.3d 1083, 1086-87 (9th Cir. 2002).

25 When a RICO claim is based on a predicate offense of fraud, the “circumstances
26 constituting fraud . . . shall be stated with particularity” pursuant to Federal Civil
27 Procedure Rule 9(b). *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004).
28 This Court previously dismissed Plaintiff’s RICO cause of action for failure to

1 “plausibly and specifically detail each false statement, where it was made, and when it
2 was made,” noting that Plaintiff’s “allegations are far too sparse to satisfy Rule 9(b)’s
3 stringent particularity requirement.” ECF No. 165, 13:7-10. The SAC fails to cure the
4 FAC’s pleading deficiencies for the same reasons. *Id.* at 13:13.

5 **1. Plaintiff Failed To Plead An “Enterprise.”**

6 Enterprise is defined as “any individual, partnership, corporation, association, or
7 other legal entity, and any union or group of individuals associated in fact although not
8 a legal entity.” 18 U.S.C. § 1961(4). To show an association-in-fact enterprise, Plaintiff
9 must plead three elements: (1) a common purpose; (2) an ongoing structure or
10 organization to the enterprise; (3) that the enterprise had the longevity necessary to
11 accomplish its purpose; and (4) the enterprise, over time, functioned as a continuing
12 unit. *Comm. to Protect Our Agric. Water v. Occidental Oil & Gas Corp.*, 235 F. Supp.
13 3d 1132, 1173-74 (E.D. Cal. 2017) (citations and quotations omitted). To establish a
14 common purpose, Plaintiff must allege that Rokoko engaged in enterprise conduct
15 distinct from its own affairs. *See Odom v. Microsoft Corp.*, 486 F.3d 541, 552 (9th Cir.
16 2007). “[A]n associated-in-fact enterprise under RICO does not require any particular
17 organizational structure, separate or otherwise.” *Id.* at 551. Plaintiff must also allege
18 facts showing “some participation in the operation or management of the enterprise” by
19 Rokoko. *Reves v. Ernst & Young*, 507 U.S. 170, 176 (1993); *Walter v. Drayson*, 538
20 F.3d 1244, 1249 (9th Cir. 2008).

21 The SAC fails at the first element. Plaintiff pleads “Rokoko Electronics, together
22 with its alter-ego entities... alter-ego liability shields... controlling shells, affiliates,
23 investors and I.P. recipients... shared a common purpose – harvesting and monetizing
24 user intellectual property.” SAC, 19:326-33. These conclusory statements are
25 insufficient to establish a common purpose. *See Comm. to Protect Our Agric. Water*,
26 235 F. Supp. 3d at 1174-75 (holding a RICO claim insufficient because conclusory
27 statements are insufficient when “the FAC pleads no specific facts indicating that
28 defendants acted with an objective unrelated to ordinary business or government

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1 aims.”).

2 Plaintiff also fails to allege any facts as to the structure of the alleged enterprise.
3 The SAC alleges the enterprise “arose from a unified scheme using the same actors,
4 comingled software systems, infrastructure, board meetings and communications.”
5 SAC, 24:423-24. These conclusory statements fail to meet Rule 9(b)’s pleading
6 standards. RICO requires “specific facts as to the nature of the connection between
7 defendants... actual allegations explaining the structure of the alleged enterprise...
8 [and] how defendants coordinated to create a vehicle with mechanisms for carrying out
9 RICO predicate crimes.” *Comm. to Protect Our Agric. Water*, 235 F. Supp. 3d at 1175.
10 The allegation the enterprise “maintained ongoing relationships, and possessed
11 sufficient longevity” is similarly inadequate to establish longevity or a “continuing
12 unit.” SAC, 19:333-34; *see Comm. to Protect Our Agric. Water*, 235 F. Supp. 3d at
13 1175-76 (holding a RICO claim was insufficient because the plaintiffs failed to
14 “plead facts showing that defendants acted jointly over a period of time.”).

15 **2. Plaintiff’s “Wire Fraud” Allegations Remain Insufficient.**

16 “To make out a claim for the RICO predicate act of wire or mail fraud, plaintiffs
17 must allege (i) a scheme or artifice devised with (ii) the specific intent to defraud and
18 (iii) use of the United States mail or interstate telephone wires in furtherance thereof.”
19 *Comm. to Protect our Agric. Water*, 235 F. Supp. 3d at 1176 (citing *Orr v. Bank of*
20 *America, NT & SA*, 285 F.3d 764, 782 (9th Cir. 2002)).

21 The SAC alleges three “wire fraud” statements that fail to “state the time, place,
22 and specific content of the false representations as well as the identities of the parties to
23 the misrepresentation.” *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392-93
24 (9th Cir. 1988). All three statements lack a concrete showing of the “who, what, when,
25 where, and how” of the predicate acts alleged, rendering the SAC insufficient to support
26 a RICO claim. *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003).

27 Plaintiff alleges that “[b]eginning on or about August 14, 2024 to present,”
28 Rokoko’s website states that user data “will not be shared” and users would “never see

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1 [their] cloud-synced animations utilized by anyone else, even Rokoko” (“Statement
2 1”).⁷ SAC, 20:360-21:363. The SAC does not identify the Rokoko agent that authored
3 or approved the representation, fails to provide a specific URL or webpage, the precise
4 dates that Plaintiff encountered the statement or relied on it to his detriment, or why the
5 statement was false when Plaintiff encountered it. Rule 9(b) demands more. *See Vess*,
6 317 F.3d at 1106; *Alan Neuman*, 862 F.2d at 1392-93.

7 Further, Plaintiff explicitly alleges that Rokoko sent users a notice of its updated
8 terms, consistent with the above statement on Rokoko’s website. SAC, 21:367-71.
9 Providing notice does not lead to the inference that Rokoko devised a scheme with “the
10 specific intent to defraud.” Plaintiff also fails to plead which Rokoko members were
11 involved in the alleged 2022 pitch deck. *See Comm. to Protect Our Agric. Water*, 235
12 F. Supp. 3d at 1180 (a wire fraud claim is deficient where the complaint “does not
13 contain allegations clearly describing the role of each defendant in the alleged
14 fraudulent scheme, or explain who was a party to the allegedly fraudulent statements.”).

15 Plaintiff next identifies a March 27, 2025 email from Rokoko Customer Services
16 Success Manager Io Koikoula, referencing “250,000 creators now animating in Rokoko
17 Studio” (“Statement 2”). SAC, 21:374-76. Plaintiff alleges that this statement was
18 “materially misleading” because other Rokoko sources cited lower user counts. Even
19 crediting this allegation, mere puffery does not constitute a wire fraud scheme directed
20 at Plaintiff. *Cnty. of Marin v. Deloitte Consulting LLP*, 836 F. Supp. 2d 1030, 1039
21 (N.D. Cal. 2011) (recognizing “vague, exaggerated, generalized or highly subjective
22 statements regarding a product or business which do not make specific claims” as non-
23 actionable puffery).

24 Additionally, Plaintiff fails to allege that Statement 2 was made with the intent to
25

26 ⁷ Statement 1 reads in full: “Your data and content will not be shared with any external parties and
27 may only be anonymously utilized by Rokoko for data analysis in order to improve our products and
28 services. In other words, you will never see your cloud-synced animations and motion capture be
utilised by anyone else, even Rokoko.” *See* <https://support.rokoko.com/hc/en-us/articles/14897573141009-Rokoko-Studio-Offline-Mode-Cloud-Syncing>.

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1 defraud or establish how it was an “essential part of a scheme to defraud.” *Comm. to*
2 *Protect Our Agric. Water*, 235 F. Supp. 3d at 1176, 1179-80. Nor does Plaintiff allege
3 he relied on Statement 2 to transfer money or property. *A fortiori*, Statement 2 postdates
4 Plaintiff’s purchase of Rokoko products by nearly *five years*, fatally undermining any
5 theory of reliance-based fraud.

6 Finally, Plaintiff alleges that “[f]rom at least 2020 to present,” Rokoko
7 represented it had “teams located in San Francisco, Los Angeles, and Athens,” when
8 these were merely “mailboxes, co-working spaces, or registered agent addresses”
9 (“Statement 3”). SAC, 22:387-92. The SAC does not identify the who, what, when or
10 where of Statement 3, and does not allege Plaintiff relied on these statements to his
11 detriment. Further, the SAC fails to establish that Statement 3 was made with the intent
12 to defraud or how it was an “essential part of a scheme to defraud.” *Comm. to Protect*
13 *Our Agric. Water*, 235 F. Supp. 3d at 1176, 1179-80.

14 The SAC also does not allege that Plaintiff’s injuries are tied to a belief that
15 Rokoko operated brick-and-mortar offices at the aforementioned locations or the
16 location of Rokoko employees. Generalized allegations untethered to any fraudulent
17 scheme and are plainly insufficient.

18 **3. Plaintiff’s Computer Fraud Predicates Are Legally Deficient.**

19 Plaintiff’s alleged “computer fraud” predicates pled pursuant to 18 U.S.C. § 1030
20 are similarly deficient. The SAC alleges two “computer fraud” predicates. The first
21 names a backend engineer, Menelaos Spanos, who “[b]eginning in November 2020 ...
22 built and implemented the systems which knowingly accessed protected computers
23 without authorization, rights or license . . . and exceeded authorized access. . .”
24 (“Statement 4”). SAC, 22:400-23:404. The SAC fails to identify under which section
25 of 18 U.S.C. § 1030 Plaintiff asserts a claim. However, it appears Plaintiff is asserting
26 a claim under § 1030(a)(5)(B) or (C). SAC, 23:402-04. Plaintiff’s allegations that
27 Rokoko concealed the nature of the software, even taken as true, do not establish
28 unauthorized access because Plaintiff downloaded Rokoko’s software voluntarily. *See*

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1 *Bui-Ford v. Tesla, Inc.*, 2024 U.S. Dist. LEXIS 28767, at *9 (N.D. Cal. Feb. 20, 2024).
2 “[U]sers who voluntarily installed software ‘have serious difficulty’ pleading
3 unauthorized access under the CFAA, especially given the heightened pleading
4 requirements applied in consumer-protection claims sounding in fraud.” *Id.* (citations
5 omitted). Plaintiff voluntarily downloaded Rokoko’s software and a misunderstanding
6 of Rokoko’s software does not create a claim under 18 U.S.C. § 1030(a)(5)(B) or (C).

7 Plaintiff’s second allegation names an embedded software architect, Aleksander
8 Østrup, who in January 2024 designed firmware that “breaks compatibility with older
9 hub + glove” systems” (“Statement 5”). SAC, 23:412-416. To state a claim under §
10 1030(a)(5)(A), Plaintiff “must plausibly plead that it was [Rokoko]’s ‘conscious desire’
11 to cause damage to [Plaintiff’s] [device], not simply that [Rokoko] knew such damage
12 might occur.” *Margolis v. Apple Inc.*, 743 F. Supp. 3d 1124, 1133 (N.D. Cal. 2024).
13 The bare recitation that Rokoko “target[ed] the Plaintiff to force upgrade” is
14 insufficient. SAC, 23:417; *see Margolis*, 743 F. Supp. 3d at 1133 (holding that
15 allegations of profit motive, regular testing of software, and that the software is not
16 recommended for all models “do[es] not support a plausible inference that [Defendant]
17 intentionally damaged [plaintiffs’] devices.”). In fact, the *Margolis* court stated, “it is
18 equally plausible that [Defendant] concluded, for example, that the benefits of [updated
19 software] outweighed any possible loss of performance,” and held that the allegations
20 “do not plausibly suggest that [Defendant]’s purpose in making [software] available to
21 [older model] users was to damage their devices and force plaintiffs’ purchase of newer
22 phones.” *Id.* at 1134. Statement 5 fails for the same reasons.

23 **4. Pattern Allegations Are Conclusory.**

24 The SAC asserts that the predicate acts “were related and continuous, occurring
25 over multiple years, targeting the same victims (between 50,000 and 250,000),
26 employing the same methods, using the same false statements and pursuing the same
27 objective, constituting both closed-ended continuity and an ongoing threat of
28 repetition.” SAC, 24:436-40. But the alleged “pattern of racketeering” is merely a

1 recitation of legal elements, not a factual pleading. The SAC alleges three wire fraud
2 “statements” and two computer fraud events over an interval primarily tied to Plaintiff’s
3 individual use from 2020 to 2024. This limited set of specified “acts” does not
4 demonstrate the “closed ended continuity” necessary under *H.J. Inc.*, 492 U.S. at 241-
5 242, which requires a “series of related predicates extending over a substantial period
6 of time.” Nor do Plaintiff’s conclusory statements as to the alleged 50,000 – 250,000
7 “victims” sufficiently plead an “open ended-continuity” establishing a concrete threat
8 of continued criminal activity beyond Rokoko’s normal commercial operations. *See id.*
9 at 242-43.

10 **5. Injury And Proximate Causation Are Speculative.**

11 The SAC is fatally defective insofar as it alleges injuries that are either
12 speculative, untethered to any specific predicate act, or derivative from non-RICO
13 disputes. *See Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010) (citation
14 modified) (a civil RICO plaintiff is “required to show that a RICO predicate offense not
15 only was a ‘but for’ cause of his injury, but was the proximate cause as well.”)
16 Furthermore, RICO plaintiffs are required to demonstrate a “concrete financial loss,”
17 not speculative or derivative injury. *Chaset*, 300 F.3d at 1086; *see also Holmes v. Sec.*
18 *Investor Prot. Corp.*, 503 U.S. 258, 268 (1992) (proximate causation required for
19 trebling of damages under RICO).

20 **First**, Plaintiff erroneously attempts to conflate the injuries pled between Counts
21 I and III of his SAC. The RICO injuries alleged are overwhelmingly the same injuries
22 Plaintiff pleads in support of his tortious interference claim, rather than independent,
23 concrete financial losses caused by reason of the alleged predicate acts. The alleged
24 “production shutdown,” “redevelopment costs,” “lost pre-order revenue,” and disrupted
25 relationships with Nintendo, Sony, cast, crew, and contractors are all alleged to have
26 resulted from Rokko’s *firmware update*, as opposed to the result of the three wire fraud
27 or two computer fraud predicates alleged. SAC, 15:257-16:269; 25:441-44. Plaintiff
28 cannot repackage the same alleged harm under a RICO theory simply by labeling the

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1 firmware release a “computer fraud” predicate act. RICO requires a plaintiff to show
2 concrete financial loss caused “by reason of” the pattern of racketeering activity—*i.e.*,
3 the SAC’s alleged predicates—not conduct independently giving rise to a different tort.
4 *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 456–57 (2006). Plaintiff’s attempt to
5 bootstrap tortious interference damages into a RICO treble damages claim should be
6 rejected. *Oscar v. Univ. Students Co-op. Ass’n*, 965 F.2d 783, 786 (9th Cir. 1992)
7 (overruled on other grounds) (“RICO was intended to combat organized crime, not to
8 provide a federal cause of action and treble damages to every tort plaintiff.”)

9 **Second**, the SAC’s damages figures are speculative on their face. Plaintiff alleges
10 his unreleased video game “lost commercial opportunities (up to \$213,000.00 in just
11 early preorders)” and “a finished valuation” for his game “between \$55M and \$75M.”
12 SAC, 25:444-46. But Plaintiff’s game has never been released, never generated
13 revenue, and has no market track record. A self-serving valuation of an unreleased
14 product, provided by Plaintiff without any third-party appraisal or market comparables,
15 is the epitome of speculative injury. *See Chaset*, 300 F.3d at 1087 (citing *Price v.*
16 *Pinnacle Brands, Inc.* 138 F.3d 602, 607 (5th Cir. 1998)) (“injury to mere expectancy
17 interests. . . is not sufficient to confer RICO standing”). Similarly, Plaintiff’s alleged
18 damages of “up to \$213,000” is qualified with speculative language (“up to”), and does
19 not represent completed transactions or out-of-pocket losses. Such contingent future
20 revenues do not constitute the “concrete financial loss.”

21 **Third**, Plaintiff’s “physical hardware losses” are the subject of Plaintiff’s product
22 related disputes, not a RICO injury flowing from a pattern of racketeering activity. The
23 SAC fails to plead the alleged wire fraud statements or unauthorized computer access
24 caused Plaintiff’s hardware to lose value. To the extent Plaintiff alleges the firmware
25 update caused the hardware to malfunction, such allegations speak to a product defect
26 theory, rather than a racketeering injury. As with his tortious interference damages,
27 repackaging a product dispute as a RICO claim does not create the proximate cause
28 nexus the statute requires.

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1 **Fourth**, the SAC’s allegation of “loss of exclusive control over intellectual
2 property,” is redressable via Plaintiff’s surviving copyright infringement claim under
3 17 U.S.C. § 504, not RICO’s treble damages provision. SAC, 25:442-43. RICO is not
4 a vehicle for enhancing statutory remedies already available under the Copyright Act.
5 *See Oscar*, 965 F.2d at 786. Moreover, the SAC does not plead any quantified financial
6 loss attributable to the alleged “loss of exclusive control” – a vague category
7 encompassing anything from reputational harm to diminished licensing value, none of
8 which is plead with the specificity required to survive dismissal. The SAC’s catch-all
9 reference to “lost opportunities” is equally deficient. This is precisely the type of
10 “conclusory” injury allegation that cannot sustain a RICO claim. *See Twombly*, 550
11 U.S. at 555.

12 Accordingly, Plaintiff’s RICO cause of action fails as a matter of law.

13 **D. Plaintiff’s Jury Demand Is Untimely And Should Be Stricken.**

14 Plaintiff’s renewed jury demand is foreclosed by this Court’s prior order. The
15 Court struck the FAC’s jury demand under Rule 38(d), finding “no new issues of fact
16 necessary for a jury to decide” and that Plaintiff failed to identify any. ECF No. 165,
17 13–14. Under *Lutz v. Glendale Union High School*, 403 F.3d 1061, 1066–67 (9th Cir.
18 2005), an amended pleading revives a waived jury right only if it raises genuinely “new
19 issues of fact.”

20 Plaintiff argues that the SAC introduces “intentional acts to disrupt,”
21 “defamation,” and “targeted firmware release” allegations as new factual issues. SAC,
22 2:28–3:37. But as before, “the issues in the original complaint and the amended
23 complaint turn on the same matrix of facts.” ECF No. 165, 13:26-27 (*citing Lutz*, 403
24 F.3d at 1066–67). Indeed, even if the SAC introduces “new factual *questions*,” (as
25 Plaintiff argues), those inquiries are still built upon the same matrix off facts as the
26 original complaint and the FAC: Plaintiff’s purchase of Rokoko products, alleged errors
27 with Rokoko products and alleged fallout regarding Plaintiff’s videogame, and
28

1 conclusory accusations of a targeted and/or grand scheme to harvest and sell user data.
2 Plaintiff identifies nothing new in the SAC itself.

3 As to Rule 39(b), courts exercise discretion to grant a jury trial notwithstanding
4 waiver only where a party can show the failure to make a timely demand resulted from
5 more than an oversight or inadvertence. *See Pacific Fisheries Corp. v. HIH Cas. & Gen.*
6 *Ins., Ltd.*, 239 F.3d 1000, 1002 (9th Cir. 2001). Here, Plaintiff has put forth no
7 compelling reasons as to why he failed to timely demand a jury trial. The SAC’s
8 generalized assertions about “asymmetry” of resources do not constitute the “strong and
9 compelling reasons” necessary to overcome waiver.

10 **E. Any Further Chance To Amend Would Be Futile.**

11 Dismissal without leave to amend is appropriate “when (1) the plaintiff has
12 already had opportunities to amend his complaint and (2) further amendment would be
13 futile.” *Patel v. Robinson*, 2020 U.S. Dist. LEXIS 17262, at *6 (C.D. Cal. Jan. 9, 2020).
14 Plaintiff has been advised that the SAC is his “final opportunity to cure the
15 deficiencies.” ECF No. 165, 6:9-10. *See also id.* at 13:12-14. Plaintiff’s inability to cure
16 his pleading deficiencies after this Court’s explicit guidance demonstrates that further
17 amendment would be futile.

18 **F. Plaintiff’s SAC Contains Irrelevant and Improper Material That**
19 **Should Be Struck.**

20 In his Prayer for Relief, Plaintiff requests “statutory damages under 17 U.S.C. §
21 1203 for Defendant’s willful violation of the Digital Millenium Copyright Act.” SAC,
22 27:480-81. This Court dismissed Plaintiff’s DMCA claim with prejudice. ECF No. 165.
23 Accordingly, Plaintiff cannot seek relief on these grounds, and the Court should strike
24 his prayer for relief under Fed. R. Civ. P. 12(f). *Jones v. City of Los Angeles*, 2022 U.S.
25 Dist. LEXIS 91709, *6 fn. 3 (C.D. Cal. Feb. 16, 2022) (stating a remedy may be struck
26 “where the claim that provides the basis for that remedy has been dismissed.”).

27 Plaintiff also included a section related to “Embedded CMI,” under the DMCA.
28 SAC, 5:85-6:96. As explained above, the Court has dismissed Plaintiff’s DMCA claim.

1 ECF No. 165. This section is entirely irrelevant to the action, and, therefore, should be
2 struck. Fed. R. Civ. P. 12(f) (“The court may strike from a pleading... any redundant,
3 immaterial, impertinent, or scandalous matter.”).

4 Additionally, Plaintiff again pleads that he owns two copyrights. SAC, 3:55-4:56.
5 The Court has held that “his copyright infringement claim proceeds only on the former
6 copyright registration,” or Pau 4-279-489. ECF No. 165, 8:11-12. Therefore, this
7 statement should be similarly struck. Fed. R. Civ. P. 12(f).

8 **IV. CONCLUSION**

9 For the reasons stated herein, Rokoko respectfully requests that the Court grant
10 Rokoko’s Motion to Dismiss as to Count 1 and Count 3 without leave to amend.

11
12 DATED: May 4, 2026

REED SMITH LLP

13
14 By: /s/ Katherine J. Ellena
15 Katherine J. Ellena
16 Michael Galibois (*pro hac vice*)
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20 *Rokoko Electronics*
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A limited liability partnership formed in the State of Delaware

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CERTIFICATION OF MEET AND CONFER

I certify that the parties met and conferred to discuss the issues raised in the Motion and attempted in good faith to resolve the Motion in whole or in part on April 24, 2026.

DATED: May 4, 2026

/s/ Katherine J. Ellena
Katherine J. Ellena

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant Rokoko Electronics, certifies that this brief contains 6,978 words, which complies with the word limit of L.R. 11-6.2.

DATED: May 4, 2026

/s/ Katherine J. Ellena
Katherine J. Ellena

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CERTIFICATION OF GENERATIVE AI COMPLIANCE

The undersigned certifies that this submission X does not use _____ uses generative artificial intelligence. If generative artificial intelligence was used, following drafting, I reviewed, revised, and supplemented all portions of the brief, including those that were informed by the use of Artificial Intelligence or based on prior templates. I independently verified the factual and legal accuracy of the content and confirmed that all arguments and authorities were appropriate to the issues presented.

DATED: May 4, 2026

/s/ Katherine J. Ellena
Katherine J. Ellena

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