

1 MATTHEW R. WALSH
2 19197 golden valley rd #333
3 Santa Clarita, CA 91387
4 (661) 644-0012
5 Plaintiff In Pro Per,

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

MATTHEW R. WALSH

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

Plaintiff In Pro Per,

[Before: Hon. Otis D. Wright II
Courtroom 5D]

vs.

ROKOKO ELECTRONICS
(AND DOES 1 THROUGH 50,
INCLUSIVE)

**OPPOSITION TO DEFENDANTS
FIFTH MOTION TO DISMISS**

Defendant

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

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

8
9 **INTRODUCTION**

10 Plaintiff Matthew R. Walsh did not reinvent his arguments, he simply
11 augmented them directly from the Court’s contentions as to why they fail. While
12 the Court’s analysis at this stage is confined to the pleadings, Defendant’s own
13 admissions further confirm that Plaintiff’s allegations are not merely plausible, but
14 consistent with Defendant’s own statements and the allegations herein. Many of
15 Rokoko’s contentions point by point are self-defeating simply upon reading;

35 The pitch deck rapidly increased Rokoko’s valuation, with investors backing
36 a plan to commercialize this dataset. Plaintiff alleges this plan was executed
37 without authorization until Rokoko later imposed retroactive terms to obtain rights
38 it did not previously have.

39 Plaintiff, a legacy user who did not upgrade, never assented to those terms.
40 Rokoko identified him as “still using our original software” into 2024. Shortly
41 after, Rokoko released a firmware update that rendered his equipment inoperable.
42 Rokoko **now** claims the update was general, but they admitted it wasn’t in RFA’s.
43 Plaintiff alleges similarly situated users who upgraded were unaffected. Rokoko
44 then refused repair, replacement, or parts for months, effectively forcing Plaintiff
45 to purchase new equipment or abandon his work.

46 After learning these facts, Plaintiff filed suit. Following removal, Rokoko,
47 through its business partner Corridor Digital, publicly made statements to a large
48 audience that Plaintiff alleges were intended to discredit his claims and reputation.

49 These events support Plaintiff’s claims for tortious interference and
50 intellectual property infringement.

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ARGUMENT

**1. FIRST CAUSE OF ACTION: TORTIOUS INTERFERENCE
SURVIVES AS A MATTER OF LAW**

Rokoko’s answers to RFA’s create enough factual assertion to deny their 12(b)(7) and for Plaintiff to prevail on tortious interference:

- **RFA #123** — Rokoko admits Plaintiff’s outreach reached “into the millions,” reflecting substantial commercial reach.
- **RFA #124** — Rokoko admits it granted Plaintiff its “largest discount ever” based on those opportunities.
- **RFA #125–127** — Rokoko admits the CEO participated in communications discussing Plaintiff’s contracts and opportunities with him.
- **RFA #148** — Rokoko admits its COO personally shipped the hardware to Plaintiff.
- **RFA #188** — Rokoko admits Plaintiff was a member of its sponsorship program.
- **RFA #134** — Rokoko admits Plaintiff was identified as “*still using our original software*” around the time the firmware destroyed his equipment.

72 • **RFA #48** — Rokoko admits the firmware update was not a general update
73 released to all users.

74 • **RFA #163** — Rokoko refuses to confirm whether the firmware was
75 “released to the public,” objecting to the phrasing.

76 • **RFA #165** — Rokoko states it “lacks sufficient information” to admit or
77 deny confirmation the text of it’s own firmware release note.

78 • **RFA #117–118** — Rokoko admits it refused to provide repair, replacement,
79 or parts for approximately seven months.

80 Further, Rokoko attempts to relitigate and reassert contention which are
81 contrary to the Court’s findings. In Docket #65, the Court analyzed Plaintiff’s
82 claim and found that it met all but two criteria to survive:

83
84 **(1) “an economic relationship between the plaintiff and some third**
85 **party, with the probability of future economic benefit to the**
86 **plaintiff”;**

87 a. **Court was Satisfied:** *“Walsh’s relationships with various video*
88 *game companies... like Nintendo” (Dkt #165 at pp. 5).*

89 b. **Further Amendment:** Plaintiff further plead and provided
90 evidence showing over 1,700 presale orders (totaling a ceiling of
91 about \$213,000).

92 (2) “the defendant’s knowledge of the relationship”;

93 a. **Court was Satisfied:** “Walsh... plausibly alleges that Rokoko knew
94 of Walsh’s relationships with various video game companies,
95 attaching evidence showing that Walsh told Rokoko of his potential
96 business opportunities with companies like Nintendo.” (Dkt #165
97 at pp. 5)

98 b. Rokoko continues to claim lack of knowledge as a defensive
99 maneuver. **They are estopped from asserting lack of knowledge.**

100 Rokoko already admitted-to (RFA #125- 127) and then supplied
101 their internal text message screen shots demonstrating it was
102 Rokoko’s CEO, Jakob Balslev speaking with Plaintiff about those
103 contracts, Plaintiff’s outreach “into the millions” (RFA #123) and
104 authoring the “largest discount ever” based on them (RFA #124).
105 Rokoko admits their COO Mikkel Overby then personally shipped
106 the hardware (RFA #148); and Rokoko admits Plaintiff was a
107 member of their sponsorship program (RFA #188).

108 (3) the defendant’s intentional acts “designed to disrupt the
109 relationship”;

110 a. Plaintiff now in his Second Amended Complaint provides at least
111 three instances in which Rokoko acted intentionally:

112 **Wrongful Act 1: Targeted Firmware Release:** Rokoko

113 admits they initiated communications in 2024 indicating
114 Plaintiff's activity was targeted as a legacy user (RFA
115 #134). Plaintiff provided evidence and plead that it *affected*
116 *him, but not other customers and;*

117 **Rokoko admitted it was not a general update which**
118 **affected all customers** (RFA #48, Am. Compl. 12 at
119 *footnote 7*).

120 Further, Defendant cannot pretend intent and knowledge
121 were not present where the firmware literally contains an
122 internal note: (***“Important: This will break [OLDER] hub +***
123 ***glove [Firmwares]”***). This Court stated (*“the factual*
124 *allegations lead to the inference that Rokoko carelessly*
125 *released a firmware update without an adequate plan in*
126 *place to fix its consequences”*). Courts have found if a
127 firmware's interference even lacks proper notice, liability
128 can be established (*Parziale v. HP, Inc., 445 F.Supp.3d 435*
129 *(N.D. Cal. 2020)*).

130
131 Additionally, *“carelessly releasing a firmware update”* is

132 not a viable argument as Plaintiff has just verified that
133 firmware update *is still active on Rokoko's servers today;*
134 *two years later.* The note Plaintiff presents as his primary
135 evidence is called a 'Release Note'. It is added at the very
136 last moment - after months of development, weeks of
137 testing, compilation, packaging, testing, repository
138 configuration and then upload. This cannot be construed as a
139 careless mistake after two years of ongoing presence even
140 after post-litigation awareness.

141
142 **This very issue is fact-intensive** and Rokoko has not
143 disclosed an expert to rebut. **Plaintiff is an expert software**
144 **engineer who has developed firmware.** Speaking from
145 personal knowledge, Plaintiff's factual allegations must be
146 accepted as true, and those allegations plausibly support an
147 inference of knowledge and intent: The release note is both
148 the knowledge and the intent

- 149
150 *i.* **Wrongful Act 2: Refusal To Cure Harm:** Rokoko admits
151 (RFA #117, 118) they refused parts, repair, replacement for

152 nearly seven months; while knowing of Plaintiff’s contracts
153 and later admitting – only after litigation -- they could have
154 provided the repair remedy the entire time. (*Am. Compl. at*
155 *pp. 12 footnote 7*)

156 ii. **Wrongful Act 3: Defamation:** Defaming Plaintiff through
157 their self-admitted “business partner” to an audience of 10M
158 monthly listeners – including those which Plaintiff has
159 personal and business relationships and contracts with. This
160 is still to date, the only media discussion on this lawsuit to
161 date. (*Am. Compl. at pp.15*). Rokoko’s claim that
162 Defamation statements were not plead entirely ignores the
163 transcript in evidence (Am. Compl. Ex. 63). Further,
164 Rokoko’s contention that “*he alleges third party Corridor*
165 *Digital – not Rokoko – ‘published false and damaging*
166 *statements’ ...*”. That is **not** what was plead, Corridor admits
167 to actively reciting talking points, the day after filming in
168 person for Rokoko – while live on air – on the phone with
169 Rokoko (“*we’re talking to him right now*”). It’s an
170 inescapable reality because it’s both present in audio and on
171 video. Further, the argument that Rokoko’s business partner

172 did it; instead of them does not save Rokoko. It instead
173 creates a fact-intensive “Defamation-By-Proxy” or “Agent
174 Defamation” dispute with “actual malice” stemming from
175 Rokoko; making dismissal inappropriate at 12(b)(6) as
176 discovery has been requested and subpoenas have been
177 issued. (*see also St. Dun & Bradstreet, Inc. v. Greenmoss*
178 *Builders*, 472 U.S. 749 (1985), *Depp v. Heard* (2022),
179 *Amant v. Thompson*, 390 U.S. 727 (1968), *Hellar v. Bianco*,
180 *111 Cal. App. 2d 424* (1952)) (*see also International Ins.*
181 *Co. v. Guaranty Nat. Ins. Co.*] 780 F.Supp. [546] at 551
182 [(N.D.Ill.1991)(finding defamation can support tortious
183 interference and additionally invite an amendment of slander
184 even if they overlap and distinguish)

- 185 b. The complaint establishes at least three—and as many as four—
186 independently wrongful acts, though only one is required to sustain
187 the claim. Rokoko has made admissions to each. Even if the Court
188 disregards the allegations regarding (1) the firmware update, the
189 Defendant still: (2) intentionally withheld a remedy for seven
190 months solely to coerce a hardware upgrade and force assent to
191 unconscionable terms; (3) conditioned the repair on the Plaintiff's

192 surrender of his rights to seek legal remedy and; (4) coordinated
193 with their business partner to defame the Plaintiff before an
194 audience of 10 million professional peers and contract partners,
195 attempting to litigate the dispute in the court of public opinion
196 instead.

197 **(4) “actual disruption of the relationship”;** and

198 a. ***Court was Satisfied:*** “*He ... plausibly alleges that Rokoko*
199 *released a firmware update that severely hindered Walsh’s video*
200 *game development.*” (Dkt #165 at pp. 5)

201 **(5) “economic harm to the plaintiff proximately caused” by the**
202 **defendant’s acts.**

203 a. ***Court was Satisfied:*** “*relationships with various video game*
204 *companies, attaching evidence ... of his potential business*
205 *opportunities with companies like Nintendo ... severely hindered*
206 *Walsh’s video game development...* ” (Dkt #165 at pp. 5)

207 b. **Further Amendment:** Plaintiff offered more examples of the
208 disruption including the loss of actual pre-order sales totaling up to
209 \$213,000 (Am. Compl. Ex. 64)

210 **(6) “Walsh’s tortious interference claim also fails because he does not**
211 **allege an independently wrongful act... Walsh fails to identify under**

212 *what legal standard the Court should use to assess whether Rokoko’s*
213 *release of a malicious firmware update rises to the level of an*
214 *“independently wrongful act.””*

- 215 a. The Am. Complaint now lists multiple independently wrongful
216 acts with their respective state and Federal statutes including the
217 CFAA.

218 Rokoko simply repeats largely the same text over and over across each
219 Motion to Dismiss while ignoring and mischaracterizing the Plaintiff’s evidence
220 and theories to prevail (*“Rokoko’s argument fails as it misapprehends Walsh’s*
221 *theory of liability”*). These elements were either already found satisfactory by the
222 Court or have been expressly amended to satisfy the Court’s plausibility standards.
223 This claim must survive.

224 **2. THIRD CAUSE OF ACTION: CIVIL RICO SURVIVES AS A**
225 **MATTER OF LAW**

226 This Court prior found that Plaintiff satisfied *some of the elements* required
227 to survive 12(b)(6) on a civil RICO claim per *Living Designs, Inc. v. E.I. Dupont*
228 *de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005):

229 **1. “Conduct”**

- 230 a. **Court was Satisfied:** *“Walsh alleges Rokoko committed wire*
231 *fraud and computer fraud as predicate acts for RICO...*

232 *transmitted false statements through interstate electronic*
233 *communications via its website, terms and conditions,*
234 *downloadable software, e-mails and related channels”*. Further,
235 Plaintiff alleges other ‘illegal acts’; the same acts the Defendants
236 openly admit in their 2022 plan to establish and execute those
237 same acts -- which further illustrate the conduct of the enterprise.

238 **2. “of an enterprise”**

239 a. **Court was Implicitly Satisfied:** The court took no issue with
240 Plaintiff’s pleading of Rokoko’s pitch deck serving as evidence of a
241 2022 pre-plan to establish a racketeering enterprise; and then actually
242 procuring investors who wishes to participate. Nor, did the Court take
243 issue that Plaintiff met the essential elements of wire fraud under 18
244 U.S.C. § 1343 which are “(1) *the existence of a scheme to defraud*
245 *and (2) the use of interstate communications in furtherance of that*
246 *scheme.*” United States v. Santagata, 924 F.2d 391, 393 (1st Cir.1991)
247 (citing United States v. Serrano, 870 F.2d 1, 6 (1st Cir.1989))
248 (emphasis added).

249 **3. “through a pattern”**

250 a. **Court was Implicitly Satisfied:** The court took no issue with
251 Plaintiff’s pleading of an established ~five year pattern of predicate

252 acts and other unlawful activities: intellectual property
253 misappropriation, CMI removal/alteration, intellectual property
254 infringement, resale of unlawfully procured intellectual property data.
255 In fact, the Court allowed Plaintiff's claim against Rokoko for
256 intellectual property infringement to survive. If the Court found merit
257 in the pleadings for intellectual property liability on behalf of the
258 Defendant's actions, it can simply take into account (1) their 2022
259 pitch deck plan and; (2) the named investors who enjoined upon being
260 presented with that plan and (3) the actions and admissions which
261 clearly illustrate that plan and those parties enjoined in the behaviors
262 alleged and establish this prong as satisfied.

263 **4. "of racketeering activity (known as predicate acts)"**

264 a. **Court was Satisfied:** *"Walsh alleges Rokoko committed wire*
265 *fraud and computer fraud as predicate acts for RICO"*. Plaintiff
266 now upgraded those allegations with dates, times, specific people
267 and highly descriptive allegations.

268 b. **Court indicated some failure:** *"under wire fraud, Walsh alleges*
269 *that Rokoko "transmitted false statements through interstate*
270 *electronic communications via its website, terms and conditions,*
271 *downloadable software, e-mails and related channels."* (Dkt #165

272 *at pp.13*). The Plaintiff now has amended his Complaint to include
273 several CFAA predicate acts and (1) each and every false
274 statement (2) the specific person who made it (3) when it was
275 made (4) how it was made (5) and to whom. The configuration and
276 inclusion of this particularity cures the issues at hand. (*“plaintiff*
277 *must go beyond a showing of fraud, and state time, place and*
278 *content of alleged mail and/or wire communications perpetrating*
279 *that fraud. 18 U.S.C.A. §§ 1341, 1343, 1961 et seq .; Fed.Rules*
280 *Civ.Proc.Rule 9(b), 28 U.S.C.A.”*) quoting Hernandez v.
281 Ballesteros, 333 F. Supp. 2d 6 (D.P.R. 2004), aff’d sub nom.
282 Cordero-Hernandez v. Hernandez-Ballesteros, 449 F.3d 240 (1st
283 Cir. 2006). Further, Gooley v. Mobil Oil Corp., 851 F.2d 513, 515
284 (1st Cir.1988). *“In order to survive a motion to dismiss, a*
285 *complaint must set forth ‘factual allegations, either direct or*
286 *inferential, respecting each material element necessary to sustain*
287 *recovery under some actionable legal theory.’”*. Plaintiff has done
288 so here.

289 **5. “causing injury to plaintiff’s business of property.”**

- 290 a. **Court was Implicitly Satisfied:** The enterprise’s ultimate goal is
291 to carry out this very infringement and profit from it. The Court

292 has already accepted Plaintiff's well-plead allegations of at least
293 one of the acts and allowed the intellectual property infringement
294 claim to survive it. Plaintiff has alleged multiple CFAA's, wire
295 fraud and other 'illegal acts'. All allegations fit the broader scheme
296 of the enterprise as a whole. Even if one is disregarded, the others
297 support RICO.

298 As Plaintiff now upgraded those allegations with dates, times, how made or
299 effected, specific people performing those acts and highly descriptive allegations.
300 These now become fact intensive, needing discovery to disprove and are improper
301 for dismissal at 12(b)(6).

302 **3. REBUTTALS TO SPECIFIC ARGUMENTS**

303
304 Throughout their Motion, Rokoko repeatedly mischaracterizes Plaintiff's
305 pleading:

306 **First**, Rokoko attacks a defamation claim that is not pled. Plaintiff alleges
307 defamatory conduct only as part of the interference claim; the argument is
308 irrelevant.

309 **Second**, Rokoko conflates distinct causes of action claims. Plaintiff pleads
310 tortious interference, copyright infringement, and RICO separately; attacking a
311 blended theory which Plaintiff never asserted fails.

312 **Third**, Rokoko’s Rule 9(b) challenge fails. Plaintiff identifies the
313 statements, speakers, timing, and locations; Rule 9(b) does not require “*talismanic*
314 *detail*” at the pleading stage, particularly where discovery has been obstructed; as
315 Rokoko has here. See *Pludeman v. Northern Leasing Sys., Inc.*, 10 N.Y.3d 486
316 (2008).

317 **Fourth**, Rokoko’s causation and damages arguments fail. Plaintiff pleads
318 but-for causation—the firmware update caused loss of functionality, months of
319 repair delay, and halted production—and concrete damages: ~1,700 preorders
320 (~\$213,000), ~\$6,000 in equipment loss, and disruption of a multi-year pipeline.
321 These are not speculative. The Court has already recognized such.

322 **Fifth**, Under *Time Warner Cable, Inc. v. DIRECTV, Inc.*, 497 F.3d 144 (2d
323 Cir. 2007), “puffery” consists of subjective claims which cannot be proven true or
324 false. Rokoko’s statements are measurable, testable facts that they themselves have
325 contradicted. Rokoko has refused in discovery to produce a count of their
326 customers stating it is privileged and confidential.

327 **Finally**, Rokoko’s arguments regarding reliance and intent are contradicted
328 by the pleadings. Plaintiff alleges he relied on Rokoko’s representations when
329 purchasing equipment, transferring approximately \$6,000. Plaintiff further alleges
330 that Rokoko’s intent to defraud is evidenced by its own pitch deck, marketing
331 materials, and subsequent conduct. These allegations satisfy Rule 9(b).

332 **In short**, Rokoko’s Motion fails because it does not address the claims as
333 pled, but instead repeats the same tired and inapplicable arguments from past
334 filings, attacks a series of mischaracterized and non-existent arguments and wholly
335 ignores the pleadings and evidence. The claims, as actually alleged, are sufficiently
336 detailed, fact-intensive, and not appropriate for dismissal at the pleading stage.

337
338 **4. PLAINTIFF’S SAC CONTAINS IRRELEVANT AND IMPROPER**
339 **MATERIAL THAT SHOULD BE STRUCK**

340 The prayer for relief does unfortunately contain some mistakes, however,
341 this is not fatal and Courts routinely look past issues such as these. See *Coll v. First*
342 *Am. Title Ins. Co.*, 642 F.3d 876, 901 (10th Cir. 2011) (“*[T]he prayer for relief is*
343 *no part of the cause of action and the parties are entitled to such relief and to such*
344 *judgment as the complaint makes out.*”) (internal citations and quotations omitted);
345 see also 5 Wright & Miller, *Federal Practice & Procedure* § 1255 (4th ed.) (“*[T]he*
346 *selection of an improper remedy in the Rule 8(a)(3) demand for relief will not be*
347 *fatal to a party's pleading if the statement of the claim indicates the pleader may be*
348 *entitled to relief of some other type.*”).

349
350 **CONCLUSION**

351 Defendant's own admissions further confirm that Plaintiff's allegations are
352 not merely plausible, but consistent with Defendant's own statements and the
353 allegations herein. Therefore, Rokoko's fifth motion to dismiss should be denied in
354 full with prejudice.

355
356 I declare under penalty of perjury under the laws of the United States of America
357 that the foregoing is true and correct.

358
359 Executed this May 4, 2026, in Santa Clarita, California.

360 

Matthew R. Walsh
Plaintiff In Pro Per

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365 **CERTIFICATE OF COMPLIANCE**

366
367 The undersigned, counsel of record for Plaintiff appearing in pro per, certifies that
368 this brief contains 2,967 words, which complies with the word limit of L.R. 11-6.2.

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CERTIFICATE OF GENERATIVE AI USE

The undersigned certifies that this submission **does not use** 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.