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

MATTHEW R. WALSH

Plaintiff,

vs.

**ROKOKO ELECTRONICS, and
DOES 1 through 50, inclusive,
Defendant.**

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

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

**DEFENDANT ROKOKO
ELECTRONICS' MOTION FOR
SUMMARY JUDGMENT**

*[Concurrently Filed With Separate
Statement of Uncontroverted Facts;
Declaration of Ricardo Tobon;
Declaration of Jakob Balslev; Declaration
of Mikkel Overby; Declaration of Gerardo
V. Gorospe; Compendium of Evidence;
Application to File Under Seal;
Declaration of Gerardo V. Gorospe ISO
App. to Seal; [Proposed] Order]*

State Court Action Filed: May 12, 2025

Removal Date: June 12, 2025

Discovery Cutoff: August 10, 2026

Trial Date: March 9, 2027

Hearing Date: September 28, 2026

Time: 1:30 p.m.

Place: Courtroom 5D

**PUBLIC - REDACTS MATERIALS FROM
CONDITIONALLY SEALED RECORD**

**TO THE COURT AND PLAINTIFF MATTHEW R. WALSH, APPEARING
PRO SE:**

PLEASE TAKE NOTICE that on September 28, 2026, at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 5D of the United States District Court for the Central District of California, First Street Courthouse, 350 West First Street, Los Angeles, California 90012, before the Honorable Otis D. Wright, II, Defendant Rokoko Electronics (“Rokoko”) will and hereby does move the Court, pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56-1, for summary judgment in its favor and against Plaintiff Matthew R. Walsh (“Plaintiff,” and together with Rokoko, “Parties”) on Plaintiff’s sole remaining claim for copyright infringement.

This Motion is made on the grounds that there is no genuine dispute as to any material fact and Rokoko is entitled to judgment as a matter of law because: (1) Plaintiff does not own a valid, protectable copyright over the motion capture data at issue; (2) Plaintiff cannot establish copying or volitional conduct by Rokoko; and (3) Plaintiff is not entitled to statutory damages, actual damages, infringer profits, or injunctive relief.

This Motion is made following Rokoko’s attempts to confer with Plaintiff pursuant to L.R. 7-3, which began on August 11, 2026.¹ This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Separate Statement of Uncontroverted Facts and Conclusions of Law, the Declarations of Gerardo V. Gorospe, Mikkel Overby, Jakob Balslev, and Ricardo Tobon and the

¹ Rokoko requested to meet and confer regarding its forthcoming motion for summary judgment beginning on August 11, 2026, and renewed that request on August 12, 17, 18, 19, and 20, 2026. (Declaration of Gerardo V. Gorospe, ¶¶ 10-13; Exs. Q, R, S). Plaintiff refused to provide his availability until August 19, 2026, then cancelled the meeting the evening before and did not appear at the August 21, 2026 conference. (Gorospe Decl., ¶¶ 11, 13-14; Exs. R, S). In response to counsel for Rokoko’s email setting forth the bases for this Motion for Summary Judgment, Plaintiff stated: “[a]lso if that’s your theory to prevail... I... I don’t even know what to say..... All I’m going to say, is after all this, I hope you’re doing this one pro bono. Good lord.” (Gorospe Decl., ¶13; Ex. S). Plaintiff’s pro se status does not relieve him of his obligation to comply with the Local Rules, and any departure from the seven-day notice requirement of L.R. 7-3 is therefore attributable to Plaintiff’s refusal to confer and not to any lack of diligence by Rokoko.

1 exhibits thereto, the pleadings and records on file in this action, and such further
2 evidence and argument as may be presented at or before the hearing on this Motion.

3
4 DATED: August 24, 2026

REED SMITH LLP

5
6 By: /s/ Katherine J. Ellena
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

With the vast majority of his frivolous claims already dismissed, all that remains is Plaintiff Matthew R. Walsh’s (“Plaintiff”) equally frivolous claim for copyright infringement. To be sure, Plaintiff has only been able to keep that claim afloat through artful and confusing pleading, shifting narratives, and strategically-timed and litigation-driven copyright registrations. Plaintiff can rely on such tactics no longer. With fact and expert discovery now complete, the evidentiary record indisputably demonstrates that (1) Plaintiff’s purported copyright registration does not cover the raw motion capture data at issue (the “MoCap Data”); (2) Defendant Rokoko Electronics (“Rokoko”) did not engage in any copyright infringement; and (3) all that notwithstanding, Plaintiff is not entitled to any remedy. There is no genuine issue of material fact on these issues and summary judgment on Plaintiff’s sole remaining claim should be granted in Rokoko’s favor.

First, Plaintiff’s litigation-driven copyright registrations do not cover the raw MoCap Data over which Plaintiff claims copyright protection. That is because Plaintiff failed to include the MoCap Data with his deposit to the Copyright Office and because his registration includes a fatal date of completion error already recognized by this Court. This notwithstanding, the MoCap Data is fundamentally not protectable under federal copyright laws because it consists of generic recordings of commonplace human movement; the kind of stock and unoriginal expression that courts routinely decline to extend copyright protection over.

Second, Plaintiff has never identified any evidence demonstrating Rokoko copied or infringed on his copyrighted work, nor has he even identified a single Rokoko product containing his MoCap Data. Instead, he misconstrues the evidence to fit his narrative. But what the evidence indisputably shows is that Plaintiff voluntarily used Rokoko’s cloud-based software to create MoCap Data, his MoCap Data was preemptively excluded from Rokoko’s one and only sublicense deal, his MoCap Data

1 has never been used to train any of Rokoko’s products, and the AI model supporting
2 Rokoko’s products has never seen Mr. Walsh’s data during training or learned from it.
3 Each of these factors provides independent grounds for dismissal.

4 Even if Plaintiff could establish liability, his claim would yield no remedy:
5 statutory damages are barred under 17 U.S.C. § 412 as the alleged infringement long-
6 predates his copyright registration, any actual damages are wholly speculative and
7 Plaintiff has produced no evidence in support, and injunctive relief is unavailable given
8 Plaintiff’s abandonment of Rokoko products and the copyrighted work at issue.

9 Plaintiff cannot establish a single element of his copyright claim nor establish
10 any relief available to him, and Rokoko is entitled to summary judgment on *any one* of
11 the three aforementioned grounds. As such, Rokoko respectfully requests that the Court
12 grant summary judgment and dismiss Plaintiff’s sole claim with prejudice, and reserves
13 its right to seek attorney’s fees under 17 U.S.C. § 505 by separate motion.

14 **II. RELEVANT FACTUAL BACKGROUND**

15 **A. Rokoko’s Motion Capture Products.**

16 Rokoko is a Danish motion capture hardware and software company. (Rokoko’s
17 Uncontroverted Material Facts (“UMF”) ¶ 1). Rokoko Studio is an online, cloud-based
18 platform that stores and syncs the motion capture data created by a user who registers
19 an account with Rokoko.² (UMF ¶ 2). To create motion capture data on Rokoko Studio,
20 the user wears motion capture hardware (e.g., Rokoko’s proprietary Smartsuit Pro or
21 Smartgloves) which captures and records the wearer’s movements. (UMF ¶ 3). Those
22 movements are translated into data that is transmitted to Rokoko Studio where the user
23 can edit the resulting digital models. (UMF ¶ 4). Once added to the user’s Rokoko
24 Studio account, the motion capture file is automatically uploaded and “synced” to the
25 cloud within the Rokoko Studio platform for users to edit and view. (UMF ¶ 5). If a
26 user would prefer that their motion capture files not be synced to the cloud, Rokoko’s

27 ² In January 2022, Rokoko Studio launched its online, cloud-based platform model to all users, and
28 the old model was renamed as “Rokoko Studio Legacy”. (UMF ¶ 8). Prior to its launch, Rokoko
Studio was not supported by a cloud-based infrastructure. (*Id.*)

1 Enterprise plan allows users to opt out. (UMF ¶ 6). Plaintiff never subscribed to the
2 Enterprise plan. (UMF ¶ 54). Rokoko does not store user data itself and instead contracts
3 with Amazon Web Services to provide secure cloud storage and store all synced data.
4 (UMF ¶ 7).

5 Rokoko products capture raw motion capture data as the first step in a multi-stage
6 process of creating an animation. (UMF ¶ 9). A person performs a movement while
7 wearing Rokoko hardware products, and sensors react to and record the motions
8 generated by the user to create raw motion capture data. (UMF ¶ 10).

9 **B. Plaintiff’s Purchase, Use, And Assent To Terms Of Use.**

10 Plaintiff began working on his video game project – originally titled “The
11 Nothing” and later renamed “The Next World” – in 2017. (UMF ¶ 13). In or about
12 August 2020, Plaintiff ordered a Rokoko Smartsuit Pro and Smartgloves. (UMF ¶ 14).
13 From September 2020, Plaintiff used Rokoko Studio Legacy (and later, Rokoko Studio)
14 to create motion capture data files³ for his video game, The Next World. (UMF ¶ 15).
15 By at least December 31, 2024, Plaintiff’s video game production of The Next World
16 had ceased entirely. (UMF ¶ 39-40). It is undisputed that The Next World has never
17 been published, and no copy of the game has ever been sold. (UMF ¶ 39).

18 In February 2025, Rokoko sent an email to users announcing that “30 days from
19 now, on March 22, 2025, we will make a change in our Terms of Use,” describing the
20 most significant update as allowing Rokoko to “leverage this data to enhance our
21 products and services,” including “the *possibility* of sublicensing completely
22 anonymized data to third parties, while ensuring that the data can never be redistributed
23 in its original form.” (UMF ¶ 55) (emphasis added).

24 Since the most recent version of Rokoko’s Terms of Use went into effect on
25 March 22, 2025, Plaintiff has logged into and used Rokoko Studio multiple times,
26

27 ³ Plaintiff loosely refers to this data as “animations.” ECF No. 172 at 4:59-66. However, only the raw
28 motion capture data created using Rokoko products, not any resulting and “final” animations, is at
issue in this case. (UMF ¶ 30). Accordingly, Rokoko refers to the individual raw data files at issue in
this action as “MoCap Data.”

1 including on December 27, 2025. (UMF ¶ 56). “By continuing to use Rokoko products
2 after March 22, 2025,” Plaintiff agreed to the “Rokoko Studio and Vision – Standard
3 Terms of Use,” effective March 22, 2025 (“2025 ToU”). (UMF ¶ 55-57). The 2025 ToU
4 provide that users “hereby grant us [Rokoko] a perpetual, worldwide, non-exclusive,
5 royalty-free, sublicensable right to access, use, copy, and modify any intellectual
6 property rights that arise in connection with the User Content, Usage Data and any other
7 Data related to you,” with the condition that “[a]ll User Content is to be fully
8 anonymized and never distributed in its original form from any subcontractor or third-
9 party licensor. (UMF ¶ 57). Section 3.4 of the 2025 ToU provides that the user agrees
10 Rokoko may collect and use User Content, Usage Data, technical data, and related
11 information for service provision, service improvement, improvement of other
12 company products, and sublicensing “to third parties in an anonymized form never to
13 be redistributed in its original form strictly for the purpose of developing and improving
14 their services or products.” (*Id.*).

15 In or about April 2026, Rokoko entered into a single third-party motion-data
16 sublicensing agreement, but Plaintiff’s MoCap Data was preemptively excluded from
17 that sublicensing agreement. (UMF ¶¶ 49-51). Further, Plaintiff’s MoCap Data is not
18 part of any of Rokoko’s generative AI or motion capture products. (UMF ¶ 49).

19 **C. Plaintiff’s Operative Copyright Registration.**

20 On July 6, 2025, two months after filing his lawsuit (ECF No. 1-1), Plaintiff
21 applied for a copyright registration for The Next World. (UMF ¶ 17). Plaintiff
22 purportedly holds a single copyright registration – Registration No. PAu 4-279-489 –
23 for a work titled “The Next World.” (UMF ¶¶ 16-17). The original registration identifies
24 the work as an “Audiovisual Work” authored solely by Plaintiff, with a listed year of
25 completion of 2017. (UMF ¶¶ 18-19). In his correspondence with the Copyright Office,
26 Plaintiff represented that his registration covered a single work – a videogame. (UMF ¶
27 22).

1 In support of his registration, Plaintiff submitted a deposit to the Copyright Office
2 consisting of five files: 1) a two minute and forty-five second promotional trailer for
3 The Next World; 2) a diary-style booklet detailing The Next World's development; 3)
4 a script for "The Nothing"; 4) a "mission map"; and 5) written descriptions of seventy-
5 six "scenes" from The Next World. (UMF ¶¶ 23-28). Plaintiff has admitted that the
6 MoCap Data at issue in this action was not included in the deposit submitted to the
7 Copyright Office. (UMF ¶ 29). Nevertheless, Plaintiff now claims that Rokoko has
8 infringed on approximately 850 MoCap Data files that he claims fall within Registration
9 No. PAu 4-279-489. (UMF ¶¶ 30-31).

10 **D. Plaintiff's Mid-Litigation Attempts To Address Registration Defects.**

11 On April 11, 2026, Plaintiff filed a Motion for Partial Summary Judgment on his
12 "Intellectual Property Infringement" cause of action. (ECF No. 167). On April 27, 2026,
13 Rokoko's opposition noted that, "by Plaintiff's own admission," the "animation files"
14 he alleges Rokoko infringed "were created in 2020 and therefore could not possibly be
15 part of the audio visual work he admits was completed three years earlier in 2017."
16 (ECF No. 173). On May 10, 2026, about two weeks after his fully briefed summary
17 judgment motion identified several defects in his original copyright registration,
18 Plaintiff applied for a supplementary registration from the U.S. Copyright Office. (UMF
19 ¶ 33). Plaintiff's supplementary registration sought to, among other things: (a) upload a
20 list of the MoCap Data files at issue in this action, (b) change the nature of the registered
21 work from an "Audiovisual Work" to a "Motion Picture," (c) add an explanation and
22 amplification to his registration, and (d) change the date of completion for The Next
23 World from 2017 to 2024. (UMF ¶¶ 33-37).

24 On June 23, 2026, the Court issued an Order to Show Cause why the Court should
25 not sanction Plaintiff. (ECF No. 197). That same day, the Court denied Plaintiff's
26 Motion for Partial Summary Judgment and issued an Order to Show Cause why the
27
28

1 Court should not dismiss the sole remaining claim. (ECF No. 198).⁴ Plaintiff filed
2 responses to both Orders to Show Cause on June 23, 2026. (ECF Nos. 199 & 200).

3 **III. LEGAL STANDARD**

4 The moving party bears the initial burden of “producing evidence, or showing
5 the absence of evidence, on the motion for summary judgment.” *Nissan Fire & Marine*
6 *Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Once that burden is met, the
7 burden shifts to the non-moving party to “go beyond the pleadings” and “designate
8 ‘specific facts showing that there is a genuine issue for trial.’” *Celotex Corp. v. Catrett*,
9 477 U.S. 317, 324 (1986) (quoting Fed. R. Civ. P. 56(e)).

10 When a party fails to offer any proof to support its claim, “there can be ‘no
11 genuine issue as to any material fact,’ since a complete failure of proof concerning an
12 essential element of the nonmoving party’s case necessarily renders all other facts
13 immaterial.” *Id.* at 323. “The mere existence of a scintilla of evidence in support of the
14 plaintiff’s position will be insufficient.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
15 252 (1986).

16 **IV. ARGUMENT**

17 To prevail on a claim for copyright infringement, a plaintiff must prove two
18 elements: “(1) ownership of a valid copyright, and (2) copying of constituent elements
19 of the work that are original.” *Funky Films, Inc. v. Time Warner Entm't Co., L.P.*, 462
20 F.3d 1072, 1076 (9th Cir. 2006). “The second prong contains two separate components:
21 ‘copying’ (or ‘factual copying’) and illicit copying (or ‘unlawful appropriation’).” *Biani*
22 *v. Showtime Networks, Inc.*, 153 F.4th 957, 962 (9th Cir. 2025). In order to satisfy the
23 copying requirement of the second prong, Plaintiff must allege that “the infringer had
24 access to plaintiff’s copyrighted work and that the works at issue are substantially

25 ⁴ The Court’s Minute Order on the OSC additionally ordered Plaintiff to “PRODUCE to Rokoko all
26 documents submitted by him to the Copyright Office in connection with his applications for copyright
27 registration numbers Pau 4-279-489 and Pau 4-305-887.” (ECF No. 208). Fact discovery has now
28 closed and Plaintiff has refused to produce any responsive documents besides his deposit copy (i.e.,
he has not produced his applications or his email correspondence with the U.S. Copyright Office
regarding the registrations; given his refusal, counsel for Rokoko had to obtain the applications and
his email correspondence through a public records request to the U.S. Copyright Office. (UMF ¶ 61).

1 similar in their protected elements.” *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822
2 (9th Cir. 2002). Additionally, to succeed on a claim for copyright infringement, Plaintiff
3 is required “to show causation (also referred to as ‘volitional conduct’) by the
4 defendant.” *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 666 (9th Cir. 2017).

5 “In no case does copyright protection for an original work of authorship extend
6 to any idea, procedure, process, system, method of operation, concept, principle, or
7 discovery, regardless of the form in which it is described, explained, illustrated, or
8 embodied in such work.” 17 U.S.C. § 102(b). Put differently, “[t]he mere fact that a
9 work is copyrighted does not mean that every element of the work may be protected.”
10 *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 348 (1991).

11 **A. Rokoko is Entitled to Summary Judgment Because Plaintiff Does Not**
12 **Own A Valid, Protectable Copyright In The MoCap Data.**

13 **1. Plaintiff’s Registration Does Not Cover The MoCap Data**
14 **Because It Was Not Included In His Deposit.**

15 Plaintiff’s own sworn deposition testimony forecloses his copyright infringement
16 claim at the threshold. Plaintiff admitted that the MoCap Data files he claims copyright
17 protection over in this lawsuit were not included in the deposit copy he submitted to the
18 Copyright Office. (UMF ¶ 29). Instead, the deposit Plaintiff submitted to the Copyright
19 Office consists of a short videogame trailer and four PDFs: the Making of the Next
20 World Booklet, a mission map, The Nothing rough script, and a pitch deck. (UMF ¶¶
21 23-28).

22 It is well-settled that “the scope of the copyright is limited by the deposit copy.”
23 *Skidmore v. Led Zeppelin*, 952 F.3d 1051, 1063 (9th Cir. 2020) (en banc). Only the
24 contents of that registered work, as set forth in the submitted deposit copy, are protected
25 by a copyright registration. *Straughter v. Concord Music*, 2020 WL 6828920, at *9
26 (C.D. Cal. Oct. 13, 2020) (“The deposit copy ‘circumscribes the scope of the copyright’
27 and ‘defines the four corners of’ it.”). This principle is grounded in both the text and
28 purpose of the Copyright Act. *Skidmore*, 952 F.3d at 1062 (“The text is clear—for

1 unpublished works, the author must deposit one complete copy of such work. The
2 purpose of the deposit is to make a record of the claimed copyright, provide notice to
3 third parties, and prevent confusion about the scope of the copyright.”). To that end, the
4 Copyright Office instructs: “a registration for a work of authorship only covers the
5 material that is included in the deposit copy(ies)” and “does not cover authorship that
6 does not appear in the deposit copy(ies), even if the applicant expressly claims that
7 authorship in the application.” U.S. Copyright Office, Compendium of U.S. Copyright
8 Office Practices § 504.2.

9 For unpublished works—such as Plaintiff’s (UMF ¶¶ 20-21)—17 U.S.C. §
10 408(b)(1) requires the deposit of “one complete copy or phonorecord” of the work. A
11 “complete” copy of an unpublished work is “a copy or phonorecord representing the
12 entire copyrightable content of the work for which registration is sought.” 37 C.F.R. §
13 202.20(b)(2)(i). For audiovisual works existing only in machine-readable form, the
14 deposit must consist of “either a videotape of the work depicting representative portions
15 of the copyrightable content, or a series of photographs or drawings, depicting
16 representative portions of the work, plus in all cases a separate synopsis of the work.”
17 37 C.F.R. § 202.20(c)(2)(viii)(B). Any deposit must be a “bona fide cop[y]” of the
18 original work, not a reconstruction or substitute. *Kodadek v. MTV Networks, Inc.*, 152
19 F.3d 1209, 1212 (9th Cir. 1998); *Seiler v. Lucasfilm, Ltd.*, 808 F.2d 1316, 1322 (9th Cir.
20 1986). Where a complete copy cannot be submitted, identifying material may substitute,
21 but it must “consist of photographic prints, transparencies, photostats, drawings, or
22 similar two-dimensional reproductions or renderings of the work,” 37 C.F.R. §
23 202.21(a), and must be sufficient “to show the entire copyrightable content in the
24 ordinary case,” and in “no case less than an adequate representation of such content.”
25 37 C.F.R. §§ 202.20(c)(2)(iv), 202.21(a)-(b).

26 Given that Plaintiff’s work is unpublished, the strict “one complete copy”
27 standard of 17 U.S.C. § 408(b)(1) governs the sufficiency of his deposit copy. Of the
28 files Plaintiff actually submitted, he contends that two – the trailer and the mission map

1 – nonetheless serve as identifying material containing the MoCap Data at issue. Both
2 arguments fail.

3 **a. Plaintiff’s “Trailer” Does Not Identify A Single MoCap Data**
4 **File.**

5 In his deposition, Plaintiff testified that [REDACTED]
6 [REDACTED]
7 (UMF ¶ 30). This admission is fatal to any contention by Plaintiff that the trailer can
8 serve as identifying material within the confines of 37 C.F.R. § 202.21(a). The trailer
9 depicts the end product of a multi-stage process in which raw MoCap Data is first
10 “solved,” “retargeted” to a licensed character skeleton, then subjected to “additional
11 motion editing and animation work” before it is “professionally considered finalized
12 and usable.” (UMF ¶¶ 9-10). Plaintiff also conceded he used other software, including
13 Unreal Engine, to create the trailer, further confirming that the final product of the trailer
14 reflects Plaintiff’s downstream production rather than any raw MoCap Data he *may*
15 have used through Rokoko Studio. (UMF ¶ 29). Indeed, when pressed at deposition on
16 whether [REDACTED]
17 [REDACTED] (UMF ¶ 31). Plaintiff’s concession is unsurprising: the trailer consists
18 of brief snippets of animation footage. (*Compare* UMF ¶ 28 [Ex. M5] *with* UMF ¶ 42
19 [Ex. B]). Accordingly, the only “videotape of the work depicting representative portions
20 of the copyrightable content” in Plaintiff’s entire deposit is several processing stages
21 removed from the underlying MoCap Data and cannot substitute for the raw data
22 Plaintiff claims Rokoko infringed.

23 **b. Plaintiff’s “Mission Map” Discusses Plot, Not Data.**

24 Plaintiff’s reliance on the descriptions in his mission map likewise fails to
25 identify any MoCap Data files. Plaintiff’s own testimony is that [REDACTED]
26 [REDACTED]

27 ⁵ Rokoko makes limited redactions to Plaintiff’s deposition testimony, which Plaintiff designated
28 “Confidential”. Rokoko provided Plaintiff with a copy of the excerpts from his transcript for purposes
of this motion and requested that Plaintiff return with proposed redactions; Plaintiff never responded.
(Declaration of Gerardo V. Gorospe ISO App. to Seal, ¶ 8, Ex. U).

1 [REDACTED] are included in the mission map. (UMF ¶ 25). The only “identifiers”
2 Plaintiff can point to are narrative scene names and prose descriptions of plot and
3 character action – not depictions of the MoCap Data itself. (UMF ¶ 25). But 37 C.F.R.
4 § 202.21(a) requires identifying material to consist of “photographic prints,
5 transparencies, photostats, drawings, or similar two-dimensional reproductions or
6 renderings of the work” – not textual descriptions of a story. Further, 37 C.F.R. §
7 202.20(c)(2)(viii)(B), which governs deposit copies, confirms that a written synopsis is,
8 at most, a mandatory *supplement* to a qualifying videotape or photographs. *Id.* (“For
9 audiovisual works, the deposit shall consist of either a videotape of the work depicting
10 representative portions of the copyrightable content, or a series of photographs or
11 drawings, depicting representative portions of the work, *plus* in all cases a separate
12 synopsis of the work.”) (emphasis added). The separate synopsis of the work is
13 required *in addition to*, not *instead of*, visual material depicting the copyrightable
14 content itself. The mission map’s narrative description of actions in a scene cannot
15 substitute for the MoCap Data Plaintiff claims are protected under his registration.

16 The bottom line is that MoCap Data in its raw form is not included in Plaintiff’s
17 deposit copy. Plaintiff’s copyright registration therefore does not protect the MoCap
18 Data Plaintiff alleges was infringed. *Skidmore*, 952 F.3d at 1063. Accordingly, Plaintiff
19 cannot satisfy the threshold element of his copyright infringement claim, ownership of
20 a valid copyright, and Rokoko is entitled to summary judgment as a matter of law.

21 **2. Rokoko is Entitled To Summary Judgment on Plaintiff’s**
22 **Defective Registration.**

23 This Court has already noted that Plaintiff’s copyright Registration No. PAu 4-
24 279-489, which lists a 2017 date of completion, cannot confer copyright protection over
25 MoCap data created from 2020 onward. (ECF No. 198 at 4:5-7). Under 17 U.S.C. §
26 408(d) and 37 C.F.R. § 202.6, a supplement may only “correct an error in copyright
27 registration or amplify the information given in a registration” and does not supersede
28 the earlier registration nor permit a registrant to rewrite the scope of a prior registration.

1 Accordingly, courts have declined to consider or give effect to supplementary
2 registrations designed to rehabilitate registrations already subject to pending
3 infringement litigation, particularly where the supplement seeks to address defects
4 identified by the defendant. *See e.g., Oskar Systems, LLC v. Club Speed, Inc.*, 745 F.
5 Supp. 2d 1155, 1162-64 (C.D. Cal. 2010) (rejecting a supplement filed on the eve of
6 summary judgment briefing that changed the completion date from 2002 to 2008);
7 *Michael Pellis Architecture PLC v. M.L. Bell Constr. LLC*, 693 F. Supp. 3d 594, 602
8 (E.D. Va. 2023) (courts disfavor supplements to registrations already subject to pending
9 infringement litigation); *cf. Lanard Toys Ltd. v. Novelty, Inc.*, 511 F. Supp. 2d 1020
10 (C.D. Cal. 2007) & *Express, LLC v. Fetish Group, Inc.*, 424 F. Supp. 2d 1211, 1216,
11 1220-24 (C.D. Cal. 2006) (supplements seeking to clarify or *narrow* an existing claim
12 are permissible).

13 The undisputed timing of Plaintiff’s copyright registrations indicate an obvious
14 *modus operandi*: when Rokoko identifies a fatal defect in Plaintiff’s infringement claim,
15 Plaintiff runs to the Copyright Office in an attempt to retroactively save his claim.
16 Plaintiff filed this action without a valid copyright, obtained his original registration
17 *only after* Rokoko moved to dismiss for lack of a valid registration, and applied for a
18 supplement on May 10, 2026 *only after* Rokoko’s opposition to Plaintiff’s motion for
19 partial summary judgment identified the mismatch between the 2017 date and the 2020-
20 2024 MoCap Data at issue. (ECF No. 42 at 1-19; ECF No. 173 at 5:25-6:13, 13:1-14:9;
21 ECF No. 200 at 17-18; UMF ¶38).

22 Indeed, Plaintiff’s repeated representation to this Court that the “sole purpose” of
23 the supplement was to address a “clerical error” is demonstrably false in light of
24 Plaintiff’s own communications with the Copyright Office. (ECF No. 200 at 5:88-89;
25 UMF ¶¶ 34-37). Plaintiff’s correspondence with the Copyright Office reveals that the
26 supplement’s primary purpose was threefold. Plaintiff (1) attempted to upload a list of
27 the MoCap Data files at issue to his deposit; (2) attempted to reclassify his work from
28 an “Audiovisual Work” to a “Motion Picture”; and (3) sought to add a litany of

1 “amplifications” to his registration in a transparent attempt to expand the scope of his
2 registration to include the MoCap Data he knew was not part of his deposit copy. (UMF
3 ¶¶ 34-37). In Plaintiff’s own words to the Copyright Office: “the whole supplementation
4 thing was to add a file [he] forgot to add,” while the ability to change the date of
5 completion from 2017 to 2024 was a “[s]ilver lining”. (UMF ¶ 35).

6 Plaintiff himself repeatedly testified that [REDACTED]
7 [REDACTED] (UMF ¶ 40) and has consistently represented throughout this litigation that his
8 production of The Next World was permanently halted. (ECF No. 1-1 at 12, 15; ECF
9 No. 114 at 8; ECF No. 172 at 15). Most tellingly, Plaintiff has not, and cannot, produce
10 a finished copy or version of his work. (UMF ¶ 39-40). Plaintiff’s conflicting
11 representations to the Copyright Office (alleging completed work) and representations
12 to this Court (alleging a complete halt in the production of his work) confirm that both
13 of his claimed dates of completion have zero factual basis.

14 **B. Rokoko Is Entitled To Summary Judgment Because Plaintiff’s Motion**
15 **Capture Data Lacks The Originality To Qualify For Copyright**
16 **Protection.**

17 Although Plaintiff’s copyright does not encompass the MoCap Data, the MoCap
18 Data lacks originality sufficient to confer copyright protection. The MoCap Data
19 consists of rote, generic movements that are completely devoid of originality. The
20 Copyright Act does not protect such commonplace expressions.

21 It is well-settled that “[o]riginality remains the sine qua non of copyright;
22 accordingly, copyright protection may extend only to those components of a work that
23 are original to the author.” *Feist Publ’ns*, 499 U.S. at 348. “As a constitutional matter,
24 copyright protects only those constituent elements of a work that possess more than a
25 de minimis quantum of creativity.” *Id.* at 363. Section 102(b) of the Copyright Act
26 reinforces this principle, stating “[i]n no case does copyright protection for an original
27 work of authorship extend to any idea, procedure, process, system, method of operation,
28

1 concept, principle, or discovery, regardless of the form in which it is described,
2 explained, illustrated, or embodied in such work.” 17 U.S.C. § 102(b).

3 Under the merger doctrine, “copyright protection does not extend to expression
4 that is inseparable from the underlying idea, where there are only a limited number of
5 ways to express that idea.” *Barkley & Assocs. v. Quizlet, Inc.*, 2025 U.S. Dist. LEXIS
6 179287, at *7-8 (C.D. Cal. Sept. 11, 2025). Similarly, under the scènes à faire doctrine,
7 copyright “precludes protection for elements that necessarily follow from common
8 ideas or standard techniques.” *Id.* at *8. “[C]opyright protection does not encompass
9 games as such, since they consist of abstract rules and play ideas.” *Capcom U.S.A.,*
10 *Inc. v. Data East Corp.*, 1994 U.S. Dist. LEXIS 5306, *26 (N.D. Cal. Mar. 16, 1994)
11 (citing *Midway Mfg. Co. v. Bandai-America, Inc.*, 546 F. Supp. 125, 148 (D.N.J. 1982)).
12 When considering videogames specifically, courts have held that they are “audiovisual
13 works... largely unprotectable games.” *Id.* at *26.

14 Plaintiff’s MoCap Data is precisely the type of commonplace, unprotectable
15 material that the Copyright Act and Ninth Circuit precedent exclude from copyright
16 protection. Plaintiff’s MoCap Data consists of generic movements such as basic hand
17 movements, walking, running, and falling. (UMF ¶ 42). Plaintiff’s own description of
18 the MoCap Data states that the files consist of [REDACTED]

19 [REDACTED]
20 [REDACTED] (*Id.*). These are nothing
21 more than stock, everyday human movements captured by a motion capture suit. *See*
22 *Lesley v. Spike TV*, 2005 U.S. Dist. LEXIS 51305, at *25 (C.D. Cal. July 26, 2005)
23 (“[T]o the extent that an actor’s performance consists of stock poses and movements,
24 the performance is not copyrightable.”); *Thé v. Rydberg*, 2012 U.S. Dist. LEXIS
25 199996, *9 (C.D. Cal. Jan. 18, 2012) (holding that “individual martial arts movements
26 are not copyrightable.”).

27 Additionally, Rokoko’s expert independently confirmed the generic and
28 unoriginal nature of Plaintiff’s MoCap Data. After reviewing over fifty minutes of

1 Plaintiff's MoCap Data in Rokoko's possession,⁶ Mr. Tobon concluded that the MoCap
2 Data files "contained a person performing basic moves" consisting of "an individual
3 standing, looking around, walking, sitting, gesticulating with their arms" that were
4 "executed in a generic manner, with very neutral style and timing and are not character
5 specific." (UMF ¶ 42). Mr. Tobon further opined that "no specialized training or skills
6 would be needed to carry out these movements" and that "[a]ny of the tens of thousands
7 of Rokoko Studio users with average physical ability and coordination can execute the
8 same motions." *Id.* Indeed, the motions are so generic that "it is not possible to infer the
9 age, gender or occupation of the individual by just looking at the available motions."
10 *Id.* Mr. Tobon concluded that the moves in the MoCap Data files he reviewed "lack the
11 specificity needed to place them" in the setting of Plaintiff's game "without additional
12 information or context." *Id.* In other words, the MoCap Data is not creative expression.
13 It is stock, generic movement that requires substantial additional creative work before
14 it can convey any meaning.

15 Plaintiff's testimony further confirms his MoCap Data lacks originality. For
16 example, Plaintiff's declaration in support of his Motion for Partial Summary Judgment
17 includes an exhibit showing an animation – which he claims was generated from the
18 MoCap Data created for The Next World – that was reused in a separate project, "New
19 Terra," which Plaintiff described as a "completely different" game. (ECF No. 167-1,
20 Ex. 15; UMF ¶¶ 43-44). The fact that the MoCap Data can be repurposed and used in a
21 "completely different" game shows it carries no creative expression unique to The Next
22 World. Expression unique to one work cannot, by definition, be repurposed into a
23 different one. Plaintiff's own treatment of the MoCap Data as interchangeable and
24 untethered to The Next World confirms it lacks the originality *Feist* requires.

25 Because Plaintiff's MoCap Data consists of nothing more than raw motion
26 capture recordings of basic, commonplace human movements, it lacks the originality
27 required for copyright protection under 17 U.S.C. § 102 and *Feist*.

28 ⁶ A sample of the MoCap Data is attached to the Declaration of Ricardo Tobon as Exhibit B.

C. Rokoko Is Entitled to Summary Judgment Because Plaintiff Cannot Establish Copying by Rokoko.

In order to satisfy the copying requirement, Plaintiff must prove that “the infringer had access to plaintiff’s copyrighted work and that the works at issue are substantially similar in their protected elements.” *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822 (9th Cir. 2002). Additionally, to succeed on a claim for copyright infringement, Plaintiff is required “to show causation (also referred to as ‘volitional conduct’) by the defendant.” *Giganews, Inc.*, 847 F.3d at 666.

The “copying” element of a copyright infringement claim “contains two separate components: ‘copying’ (or ‘factual copying’) and illicit copying (or ‘unlawful appropriation’).” *Biani v. Showtime Networks, Inc.*, 153 F.4th 957, 962 (9th Cir. 2025). “Without copying, there is no copyright violation because, unlike in the patent context, copyright law does not grant authors a monopoly on protected works.” *Woodland v. Hill*, 136 F.4th 1199, 1206 (9th Cir. 2025). A plaintiff alleging copyright infringement must identify two works – his own and the defendant’s – and then demonstrate substantial similarity between them. *See Cavalier*, 297 F.3d at 822.

The Ninth Circuit’s substantial similarity analysis requires that both the extrinsic and intrinsic tests be satisfied. *Skidmore*, 952 F.3d at 1064. Under the extrinsic test, the Court “compares the objective similarities of the two works” not including “the unprotectable elements of the plaintiff’s work.” *Anton Int’l v. Gaojing Wei*, 2021 U.S. Dist. LEXIS 81614 at *6 (C.D. Cal. April 28, 2021). The extrinsic test “is objective in nature” and “focuses on articulable similarities between the plot, themes, dialogue, mood, setting, pace, characters, and sequence of events in the two works.” *Funky Films*, 462 F.3d at 1077.

Here, Plaintiff has presented no intrinsic or extrinsic analysis of any kind. He has not identified what specific expressive elements of his works were allegedly copied. He has not identified any of Rokoko’s work to compare against his own. He has offered nothing more than the bare assertion that Rokoko “took” his MoCap Data, which, even

1 if true, does not establish that Rokoko copied protectable expression from those files
2 into any other work. The absence of any substantial similarity showing is fatal to
3 Plaintiff's claim.

4 Plaintiff's copyright infringement claim fundamentally conflates the alleged
5 possession or storage of his MoCap Data with the copying of protectable expression
6 required to sustain a copyright infringement claim. These are not the same thing. Even
7 assuming Plaintiff's MoCap Data was entitled to copyright protection, copyright law
8 does not prohibit mere possession of a copyrighted work; it prohibits the unauthorized
9 reproduction, distribution, display, performance, or creation of derivative works
10 incorporating protectable expression. *See* 17 U.S.C. § 106.

11 Plaintiff will likely point to the existence of a single motion-data sublicensing
12 deal as his sole basis for copying. The undisputed evidence forecloses that theory. The
13 sublicensing agreement was not executed until 2026 — more than a year after Plaintiff
14 filed this lawsuit. (UMF ¶ 50). Moreover, it is undisputed that Plaintiff's MoCap Data
15 was never included in, and was affirmatively excluded from, the dataset underlying that
16 sublicense. (UMF ¶ 51). It is further undisputed that Plaintiff's data was never used to
17 train any of Rokoko's products, and the AI model supporting Rokoko's products has
18 never seen Plaintiff's data during the training or learned from it. (UMF ¶ 49).

19 With respect to the causation element, "[a]utomatic copying, storing, or
20 transmission of copyrighted materials is insufficient to allege volitional conduct." *BMG*
21 *Rts. Mgmt. (United States) LLC v. Jooy Inc.*, 716 F. Supp. 3d 835, 841 (C.D. Cal. 2024).
22 Rokoko Studio is an online, cloud-based platform that automatically stores and syncs
23 motion capture data created by registered users. (UMF ¶ 5). Critically, Rokoko does not
24 store user data itself; Rokoko's role is limited to operating the platform through which
25 users voluntarily upload their own content – it does not select any material for upload,
26 download, transmission, or storage. (UMF ¶ 52). Plaintiff voluntarily purchased
27 Rokoko's motion capture hardware, voluntarily downloaded and installed Rokoko
28

1 Studio, voluntarily created MoCap Data using Rokoko's products, and voluntarily
2 uploaded those MoCap Data files through the platform. (UMF ¶ 53).

3 Under binding Ninth Circuit authority, these facts preclude a finding of volitional
4 conduct by Rokoko. 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." *Fox Broad. Co. v. Dish Network L.L.C.*, 747 F.3d 1060,
7 1067 (9th Cir. 2014). Moreover, "'automatic copying, storage, and transmission of
8 copyrighted materials, when instigated by others, does not render an [Internet service
9 provider] strictly liable for copyright infringement[.]'" *Giganews*, 847 F.3d at 670
10 (citing *CoStar Grp., Inc. v. LoopNet, Inc.*, 373 F.3d 544, 555 (4th Cir. 2004)).

11 **D. Rokoko Is Entitled To Summary Judgment Because Plaintiff Is Not**
12 **Entitled To Any Remedy.**

13 **1. Statutory Damages For The Alleged Infringement Are Barred**
14 **Under § 412.**

15 Under 17 U.S.C. § 504(1), a copyright owner may elect statutory damages instead
16 of actual damages and profits. However, under 17 U.S.C. § 412:

17 [N]o award of statutory damages or of attorney's fees, as provided by
18 sections 504 and 505... shall be made for— (1) any infringement of
19 copyright in an unpublished work commenced before the effective date of
20 its registration; or (2) any infringement of copyright commenced after first
publication of the work and before the effective date of its registration,
unless such registration is made within three months after the first
publication of the work.

21 This provision "leaves no room for discretion." *Derek Andrew, Inc. v. Poof*
22 *Apparel Corp.*, 528 F.3d 696, 699 (9th Cir. 2008). A defendant is entitled to summary
23 judgment pursuant to § 412 where it is undisputed that the alleged infringement
24 commenced before the effective date of the copyright's registration. *See e.g., Wyatt*
25 *Tech. Corp. v. Malvern Instruments Incorporation*, No. CV 07-08298 DDP (MANx),
26 2009 U.S. Dist. LEXIS 66097, at *44-45 (C.D. Cal. July 29, 2009).
27
28

1 The undisputed facts establish that § 412 bars Plaintiff’s claim for statutory
2 damages. The effective date of Plaintiff’s registration for his unpublished work “The
3 Next World” is July 6, 2025. (UMF ¶ 17). Yet it is undisputed that the alleged
4 infringement commenced long before the effective date of registration. (See ECF No.
5 172, 16:281-82 (“Defendant Rokoko employed hidden software code to harvest user
6 animations in each software version since at least 2022.”); UMF ¶ 58).

7 Plaintiff cannot avoid § 412’s bar by characterizing alleged post-registration acts
8 as separate infringements. ECF No. 172, 18:311-13. The Ninth Circuit has expressly
9 held that “[e]very court to consider the issue has held that ‘infringement ‘commences’
10 for the purposes of § 412 when the first act in a series of acts constituting continuing
11 infringement occurs.” *Derek Andrew*, 528 F.3d at 700-01 (citing *Johnson v. Jones*, 149
12 F.3d 494, 506 (6th Cir. 1998)).

13 Because Plaintiff claims the alleged infringement of his unpublished work
14 commenced in 2022, years before the July 6, 2025 effective date of registration, §
15 412(1) bars any award of statutory damages.

16 **2. Rokoko Is Entitled To Summary Judgment As To Actual**
17 **Damages Because Plaintiff Has No Evidence Of Actual Damages**
18 **Or Infringer Profits.**

19 A copyright owner is entitled to recover “the actual damages suffered by him or
20 her as a result of the infringement, and any profits of the infringer that are attributable
21 to the infringement and are not taken into account in computing the actual damages.”
22 17 U.S.C. § 504(b). Critically, “[f]rom the statutory language, it is apparent that a causal
23 link between the infringement and the monetary remedy sought is a predicate to
24 recovery of both actual damages and profits.” *Polar Bear Prods. v. Timex Corp.*, 384
25 F.3d 700, 708 (9th Cir. 2004). A plaintiff in a § 504(b) action “must establish this causal
26 connection, and... this requirement is akin to tort principles of causation and damages.”
27 *Id.* Moreover, “in a copyright action, a trial court is entitled to reject a proffered measure
28

1 of damages if it is too speculative.” *Frank Music Corp. v. MGM, Inc.*, 772 F.2d 505,
2 513 (9th Cir. 1985).

3 Plaintiff has failed to establish the fair market value of the MoCap Data at issue.
4 In his deposition and in his written discovery responses, Plaintiff confirmed that he is
5 not seeking actual damages. (UMF ¶ 60). Nor has Plaintiff ever produced any evidence
6 of actual damages (*i.e.*, no financial records, no licensing agreements for the MoCap
7 Data, no evidence of any revenue earned from the works at issue, and no expert
8 valuation of the MoCap Data’s fair market value). (UMF ¶ 59).

9 Even if Plaintiff could articulate a theory of actual damages, he cannot establish
10 the required causal nexus. Under § 504(b), “actual damages must be suffered as a result
11 of the infringement, and recoverable profits must be attributable to the infringement.”
12 *Polar Bear*, 384 F.3d at 708 (internal quotations omitted). Plaintiff’s claimed damages,
13 to the extent discernible, appear to rest on the allegations that the infringement caused
14 “loss of exclusive control over copyrighted works, lost access to his original works
15 entirely, disruption and delay of production, loss of licensing opportunities, and
16 diminished value of the [MoCap Data].” ECF No. 172, at 18. However, Plaintiff has not
17 provided any evidence to support that he suffered any harm relating to those allegations.

18 “[T]o survive summary judgment on a demand for indirect profits pursuant to §
19 504(b), a copyright holder must proffer sufficient non-speculative evidence to support
20 a causal relationship between the infringement and the profits generated indirectly from
21 such an infringement.” *Mackie*, 296 F.3d at 915-16.

22 Rokoko has never sold Plaintiff’s MoCap Data (UMF ¶¶ 49-51), so infringer
23 profits are non-existent. Even if they were, Plaintiff’s theory that Rokoko derived profits
24 from his MoCap Data is fatally attenuated. The logical chain he posits – that Rokoko
25 synced his MoCap Data to the cloud, that Rokoko then sublicensed data from its motion
26 dataset to a third party, and that his specific MoCap Data was part of that sublicensing
27 deal – rests on nothing more than speculation and conjecture – which the record shows
28

1 is actually indisputable false. Mere speculation is not sufficient to support a claim for
2 infringer profits. *Mackie v. Rieser*, 296 F.3d 909, 915-16 (9th Cir. 2002).

3 **3. Rokoko Is Entitled To Summary Judgment As To Injunctive**
4 **Relief Because There Is No Conduct To Enjoin.**

5 Plaintiff's prayer for injunctive relief fails because there is nothing to enjoin. A
6 plaintiff seeking a permanent injunction must satisfy the traditional four-factor test,
7 demonstrating "(1) that it has suffered an irreparable injury; (2) that remedies available
8 at law, such as monetary damages, are inadequate to compensate for that injury; (3) that,
9 considering the balance of hardships between the plaintiff and defendant, a remedy in
10 equity is warranted; and (4) that the public interest would not be disserved by a
11 permanent injunction." See *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391
12 (2006).

13 Injunctive relief is prospective in nature. Its purpose is to prevent future harm,
14 not to redress harm already done. "A request for injunctive relief remains live only so
15 long as there is some present harm left to enjoin." *Bayer v. Neiman Marcus Grp., Inc.*,
16 861 F.3d 853, 864 (9th Cir. 2017). Equitable relief is unavailable "where there is no
17 showing of any real or immediate threat that the plaintiff will be wronged again." *City*
18 *of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). Where the conduct alleged as the
19 basis for the requested relief "could not reasonably be expected to recur," the claim for
20 an injunction fails. *Bayer*, 861 F.3d at 864.

21 Plaintiff cannot establish entitlement to an injunction for two independent
22 reasons. First, Rokoko never infringed Plaintiff's MoCap Data in the first instance; an
23 injunction cannot issue to prevent the recurrence of infringement that never occurred.
24 Second, Plaintiff's own sworn testimony forecloses any prospect of future infringement.
25 Plaintiff's infringement theory depends entirely on his use of Rokoko products to create
26 MoCap Data tied to the production of his video game. Plaintiff has testified that [REDACTED]

27 [REDACTED]
28 [REDACTED] (UMF ¶ 40). There is thus no ongoing relationship between the parties and no

1 mechanism by which any additional MoCap Data could be created, uploaded, or
2 allegedly copied. Whatever the merits of Plaintiff’s claim as to past conduct – and there
3 are none – there is no “real and immediate threat of repeated injury” that could support
4 prospective equitable relief. *Lyons*, 461 U.S. at 102.

5 **V. CONCLUSION**

6 For the reasons stated herein, Rokoko’s Motion for Summary Judgment should
7 be granted.

8
9 DATED: August 24, 2026

REED SMITH LLP

10
11 By: /s/ Katherine J. Ellena
12 Katherine J. Ellena
13 Michael Galibois (*pro hac vice*)
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant Rokoko Electronics, certifies that this brief contains 6,993 words, which complies with the word limit of L.R. 11-6.2.

DATED: August 24, 2026

/s/ Katherine J. Ellena
Katherine J. Ellena

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: August 24, 2026

/s/ Katherine J. Ellena
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