

1 Katherine J. Ellena (SBN 324160)
kellena@reedsmith.com
2 REED SMITH LLP
515 South Flower Street, Suite 4300
3 Los Angeles, CA 90071-1514
Telephone: +1 213 457 8000
4 Facsimile: +1 213 457 8080

5 Michael B. Galibois (*pro hac vice*)
mgalibois@reedsmith.com
6 Emily Graue (*pro hac vice*)
egraue@reedsmith.com
7 Reed Smith LLP
10 South Wacker Drive, 40th Floor
8 Chicago, IL 60606-7507
Telephone: +1 312.207 1000
9 Facsimile: +1 312.207 6400

10 *Attorneys for Defendant,*
Rokoko Electronics, *et al.*

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 MATTHEW R. WALSH

15 Plaintiff,

16 vs.

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

18 Defendant.
19

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

[Assigned to Hon. Otis D. Wright, II,
Courtroom 5D]

**DECLARATION OF KATHERINE
ELLENA IN SUPPORT OF
DEFENDANT ROKOKO
ELECTRONICS' NOTICE OF
MOTION TO DISMISS AND
MOTON TO DISMISS COMPLAINT**

Date: August 4, 2025
Time: 1:30 p.m.
Place: Dept. 5D

[Concurrently filed with Notice of Motion
to Dismiss; Memorandum of Points and
Authorities; Request for Judicial Notice;
and [Proposed] Order]

State Court Action Filed: May 12, 2025
Removal Date: June 12, 2025
Trial Date: None

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

DECLARATION OF KATHERINE ELLENA

I, Katherine Ellena, declare:

1. I am an attorney with Reed Smith LLP and counsel for Defendant Rokoko Electronics (“Rokoko”). I have personal knowledge of the following facts and, if called as a witness, I could and would testify competently thereto.

2. I submit this declaration in support of Rokoko’s Motion to Dismiss Plaintiff’s Complaint (the “Motion”).

3. On June 13, 2025, Plaintiff informed my colleague, Emily Graue, on the telephone that he “is going to oppose pretty much everything” filed by Rokoko.

4. In light of Plaintiff’s statement, on June 19, 2025, I sent an email to Plaintiff setting forth the bases for Rokoko’s Motion so as to have a thorough, written record of Rokoko’s meet and confer efforts. In response, Plaintiff stated “Best of luck arguing that in front of a judge.” Attached hereto as **Exhibit A** is a true and correct copy of my email communication and Plaintiff’s response.

5. On June 25, 2025, I exchanged further emails with Plaintiff regarding the Motion. Attached hereto as **Exhibit B** is a true and correct copy of those emails.

6. On June 26, 2025, I further met and conferred with Plaintiff by telephone for more than one hour regarding the Motion.

7. As of the filing of this Motion, having engaged in thorough meet and confer discussions regarding the Motion, I have been unable to reach a resolution with the Plaintiff as to the issues raised in the Motion.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on June 26, 2025, in Los Angeles, California.

/s/ Katherine J. Ellena

Katherine J. Ellena

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

EXHIBIT A

From: matthew@winteryear.com
To: Elena, Katherine J.
Cc: Graue, Emily H.; Galibois, Michael B.
Subject: RE: Rokoko - Meet and Confer Re: Complaint
Date: Thursday, June 19, 2025 5:29:04 PM

External E-Mail - FROM matthew@winteryear.com <matthew@winteryear.com>



Best of luck arguing that in front of a judge.

Why are Michael and Emily – once again -- in this e-mail chain? What is their role in this?
Please state it for the record.

Once again, I must ask: why are Michael and Emily still included on these communications?
They are not admitted to this Court, and their repeated participation raises serious questions.
What is their current role here?

Please state it clearly, for the record.

Given their ongoing involvement, I will be filing an objection and moving to have both of their
pro hac vice applications denied on the basis of repeated unauthorized appearances and
filings prior to proper admission.

Matthew R. Walsh

From: Ellena, Katherine J. <KEllena@reedsmith.com>
Sent: Thursday, June 19, 2025 4:50 PM
To: matthew@winteryear.com
Cc: EGraue@reedsmith.com; [Galibois, Michael B. <MGalibois@reedsmith.com>](mailto:MGalibois@reedsmith.com)
Subject: Rokoko - Meet and Confer Re: Complaint

Mr. Walsh:

We write to meet and confer regarding the following deficiencies in your Complaint, which we believe provide Rokoko with grounds to move to dismiss the Complaint.

1. The Complaint does not allege with specificity the necessary elements of a tortious interference claim. Namely, you have not sufficiently alleged that Rokoko had actual knowledge of any purported third party contracts or that Rokoko intentionally acted with the purpose of disrupting those contracts. Furthermore, you have not pled sufficient facts demonstrating that you have suffered economic harm as a proximate result of any of Rokoko's acts.
2. Your Song-Beverly Act claim fails for a number of reasons. You expressly concede in your Complaint that the Rokoko products were purchased for your video game production, which is a

commercial use. The Song-Beverly Act only applies to consumer goods used for personal, family, or household purposes. Moreover, your Song-Beverly Act claim is barred by the one year statute of limitations. To the extent your Song-Beverly Act claim relates to your use of Rokoko's Services, as opposed to its hardware products, you have also expressly acknowledged in the Complaint that Rokoko's Services are provided on an "as-is" basis without warranty, which Rokoko is permitted to under the law. The Song-Beverly Act does not apply to products or services provided on an "as-is" basis.

3. You have not satisfied the FRCP 9(b) pleading requirements with respect to any of your fraud claims.
4. Your UCL and CLRA claims fail as a matter of law because you have not sufficiently alleged that Rokoko was aware of any purported defect in its products at the time of sale, which is necessary in order to survive a motion to dismiss. You are also not a "consumer" within the meaning of the CLRA nor did you satisfy the CLRA's pre-suit notice requirements.
5. As for your misappropriation and infringement claims, you have not identified what exactly you claim is protected intellectual property. You have also not satisfied any of the other elements of misappropriation, particularly that Rokoko acted through "improper means" as that term is defined under the law. As for your infringement claim, you have failed to identify ownership of a valid copyright.
6. Your DMCA claim fails because you have not identified any copyright management information that was intentionally removed or altered by Rokoko, nor have you alleged that Rokoko did so with the requisite culpable mental state. Case law is clear that allegations of transmitted "metadata" alone do not create a claim under DMCA.
7. Your cause of action for "unconscionable contact terms" is not a cause of action at all under California law, it is an affirmative defense.
8. Your cause of action for "illegal deployment of code and privacy violations" does not meet the pleading requirements under the CFAA and CDAFA.

In light of the vast deficiencies in your Complaint identified above, we intend to file a motion to dismiss unless you voluntarily dismiss this action. Please confirm that you will do so, otherwise Rokoko will have no choice but to proceed with its motion.

Best Regards,

Katherine J. Ellena | Senior Associate
kellena@reedsmith.com

ReedSmith LLP

515 Flower St., Suite 4300 | Los Angeles, CA 90071 | Direct: 213.457.8254 | Cell: 424.302.1476 |
Reception: 213.457.8000 | Fax: 213.457.8080

Abu Dhabi | Atlanta | Athens | Austin | Beijing | Brussels | Century City | Chicago | Dallas | Denver
| Dubai | Frankfurt | Greece | Hong Kong | Houston | Kazakhstan | London | **Los Angeles** | Miami |
Munich | New York | Paris | Philadelphia | Pittsburgh | Princeton | Richmond | San Francisco |
Shanghai | Silicon Valley | Singapore | Tysons | Washington DC | Wilmington

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

RSUSv12021

EXHIBIT B

From: [Ellena, Katherine J.](#)
To: matthew@winteryear.com; [Valencia, Heather R.](#)
Cc: [Galibois, Michael B.](#); [Graue, Emily H.](#)
Subject: Re: Matthew R. Walsh v. Rokoko Electronics et al
Date: Wednesday, June 25, 2025 7:20:38 PM

Matthew -

We attempted to meet and confer with you and you were not willing to engage. You have also stated that you will oppose any motion we file. We have met our meet and confer obligations but, as I stated, I am happy to resume the meet and confer discussion with you. Please provide your availability tomorrow.

From: matthew@winteryear.com <matthew@winteryear.com>
Sent: Wednesday, June 25, 2025 7:12 PM
To: Ellena, Katherine J. <KEllena@reedsmith.com>; Valencia, Heather R. <HValencia@ReedSmith.com>
Cc: Galibois, Michael B. <MGalibois@reedsmith.com>; Graue, Emily H. <EGraue@reedsmith.com>
Subject: RE: Matthew R. Walsh v. Rokoko Electronics et al

External E-Mail - FROM matthew@winteryear.com <matthew@winteryear.com>



It's not what I would like.

It's your obligation under 7-3.

From: Ellena, Katherine J. <KEllena@reedsmith.com>
Sent: Wednesday, June 25, 2025 7:10 PM
To: matthew@winteryear.com; Valencia, Heather R. <HValencia@ReedSmith.com>
Cc: Galibois, Michael B. <MGalibois@reedsmith.com>; Graue, Emily H. <EGraue@reedsmith.com>
Subject: Re: Matthew R. Walsh v. Rokoko Electronics et al

Matthew - I explained in detail the basis for our motion to dismiss last week and your response was "good luck arguing that to a judge". If you would like to meet and confer further, I am happy to have a call tomorrow. Please let me know your availability.

From: matthew@winteryear.com <matthew@winteryear.com>
Sent: Wednesday, June 25, 2025 7:06:28 PM
To: Valencia, Heather R. <HValencia@ReedSmith.com>
Cc: Ellena, Katherine J. <KEllena@reedsmith.com>; Galibois, Michael B. <MGalibois@reedsmith.com>; Graue, Emily H. <EGraue@reedsmith.com>
Subject: RE: Matthew R. Walsh v. Rokoko Electronics et al

External E-Mail - FROM matthew@winteryear.com <matthew@winteryear.com>

Counsel,

I saw Defendant's Notice of Withdrawal of the Motion to Dismiss.

Would you like to schedule a proper meet and confer regarding any future motion — ideally 7+ days in advance this time — so we can avoid repeating the same procedural issues?

Have a good night.
Matthew R. Walsh

From: matthew@winteryear.com <matthew@winteryear.com>
Sent: Friday, June 20, 2025 7:07 PM
To: 'Valencia, Heather R.' <HValencia@ReedSmith.com>
Cc: 'Ellena, Katherine J.' <KEllena@reedsmith.com>; 'Galibois, Michael B.' <MGalibois@reedsmith.com>; 'Graue, Emily H.' <EGraue@reedsmith.com>
Subject: RE: Matthew R. Walsh v. Rokoko Electronics et al

Citizenship diversity is DOA, the judge outlined the exact caselaw precisely:

“[I]n order to be a citizen of a State within the meaning of the diversity statute, a natural person must both be a citizen of the United States and be domiciled within the State.” — Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 828 (1989).

This is falling back to state court.

I get you are preserving yourself from Default, but I'll only file oppositions now close to the deadline of those motions as to not waste my time.

Additionally, I am amending my motion to shorten time to instead hear the motion to strike your removal.

From: Valencia, Heather R. <HValencia@ReedSmith.com>

Sent: Friday, June 20, 2025 5:54 PM

To: matthew@winteryear.com

Cc: Ellena, Katherine J. <KEllena@reedsmith.com>; Galibois, Michael B. <MGalibois@reedsmith.com>; Graue, Emily H. <EGraue@reedsmith.com>

Subject: Matthew R. Walsh v. Rokoko Electronics et al

Good afternoon,

Please see the attached documents.

DEFENDANT ROKOKO ELECTRONICS' NOTICE OF MOTION TO DISMISS AND MOTION TO DISMISS COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT ROKOKO ELECTRONICS' MOTION TO DISMISS COMPLAINT [PROPOSED] ORDER GRANTING DEFENDANT ROKOKO ELECTRONICS' MOTION TO DISMISS COMPLAINT

Thank you,

Heather Valencia

Assistant to Katherine J. Ellena

Reed Smith LLP

515 South Flower Street, Suite 4300

Los Angeles, CA 90071-1514

Direct 213.457.6458 | hvalencia@reedsmith.com

Main 213.457.8000 | Fax 213.457.8080

Please consider the environment before printing the contents of this email

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

RSUSv12021