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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*]

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

Date: June 1, 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

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

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

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

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

DATED: May 1, 2026

REED SMITH LLP

By: */s/ Katherine J. Ellena*
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Michael Galibois (*pro hac vice*)
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Attorneys for Defendant Rokoko Electronics

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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

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

II. RELEVANT FACTUAL BACKGROUND

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

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

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

III. ARGUMENT

A. Legal Standards.

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

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

[1] Rokoko's Motion does not address the second cause of action in the SAC ("Intellectual Property 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.

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

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

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

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

B. Plaintiff's Tortious Interference Cause Of Action Fails As A Matter Of Law.

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

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

1. Plaintiff Fails To Plead Rokoko's Knowledge Of Newly Alleged Relationships.

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

2. Plaintiff Fails To Plead An Intentional Act.

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

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

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

Even if Plaintiff's evidence did not disprove his assertions, the SAC again fails to allege that Rokoko intentionally (or negligently) acted in a way that was designed to disrupt Plaintiff's relationships. Plaintiff alleges that Rokoko identified him as a "'legacy' user" but does not provide any evidence to support this assertion or explanation as to how such an allegation supports an inference that Rokoko acted with the intent to harm Plaintiff only. SAC, 10:182-84.[3] Plaintiff's statement that Rokoko

[2] Other contradictory exhibits include: (a) Exhibit 58 (Plaintiff contends that "all updates are optional" but the exhibit clearly:"[t]here will be some cases where an update will be mandatory") and (b) Exhibit 27 (Plaintiff claims Rokoko holds users' data "hostage" and forces users to pay to retrieve it, but the 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.

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

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

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

3. Plaintiff Fails To Plead An Independently Wrongful Act.

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

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

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

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

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

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

[4] Plaintiff's unfair business practices claim also fails for lack of evidence demonstrating an impact on Plaintiff's prospective relationships.

[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 "[l]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,

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

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

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

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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.

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

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

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

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

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

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

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

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

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

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

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

C. Plaintiff's RICO Claim Fails As A Matter Of Law And Must Be Dismissed With Prejudice.

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

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

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

1. Plaintiff Failed To Plead An "Enterprise."

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

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

aims.").

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

2. Plaintiff's "Wire Fraud" Allegations Remain Insufficient.

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

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

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

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

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

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

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

[7] Statement 1 reads in full: "Your data and content will not be shared with any external parties and may only be anonymously utilized by Rokoko for data analysis in order to improve our products and 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.

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

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

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

3. Plaintiff's Computer Fraud Predicates Are Legally Deficient.

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

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

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

4. Pattern Allegations Are Conclusory.

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

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

5. Injury And Proximate Causation Are Speculative.

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

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

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

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

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

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

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

D. Plaintiff's Jury Demand Is Untimely And Should Be Stricken.

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

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

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

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

E. Any Further Chance To Amend Would Be Futile.

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

F. Plaintiff's SAC Contains Irrelevant and Improper Material That Should Be Struck.

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

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

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

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

IV. CONCLUSION

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

DATED: May 1, 2026

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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 1, 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 1, 2026

/s/ Katherine J. Ellena
Katherine J. Ellena