

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Matthew R. Walsh v. Rokoko Electronics et al.

Walsh v. Rokoko Electronics · No. 2:25-cv-05340-ODW (RAOx) · Decided December 22, 2025

SUMMARY

The United States District Court for the Central District of California granted Rokoko Electronics’ motion to dismiss Matthew R. Walsh’s fourteen-count complaint and denied Walsh’s motion to strike, construed in part as a motion to remand. The court held that federal-question and diversity jurisdiction existed. Several claims were dismissed with leave to amend, while others, including the Song-Beverly Act, CLRA, UCL, unconscionable-contract-terms, and fraudulent-concealment claims, were dismissed without leave to amend.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Otis D. Wright II
JURISDICTION	United States District Court for the Central District of California
DECIDED	December 22, 2025
DOCKET	2:25-cv-05340-ODW (RAOx)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff sued Rokoko Electronics in California state court. Rokoko removed the action to federal court and moved to dismiss all fourteen causes of action under Federal Rule of Civil Procedure 12(b)(6). Plaintiff moved to strike the notice of removal, which the court construed in part as a motion to remand for lack of subject matter jurisdiction.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and construes them in the light most favorable to the plaintiff, but does not accept conclusory allegations, unwarranted factual deductions, or unreasonable inferences. The complaint must contain enough factual matter to state a plausible claim for relief under Rule 8(a)(2), and fraud claims must satisfy Rule 9(b). For the jurisdictional challenge, the court considered the removal petition and summary-judgment-type evidence and placed the burden of establishing proper removal on the removing party.

TOPICS

motions to dismiss

subject matter jurisdiction

pleadings

consumer protection

intellectual property

PRACTICE AREAS

civil procedure

consumer protection

intellectual property

contracts

torts

commercial litigation

QUESTIONS PRESENTED

1. Whether the notice of removal should be stricken or the action remanded for procedural defects or lack of subject matter jurisdiction.
2. Whether the complaint plausibly pleaded fourteen causes of action under Rule 12(b)(6).
3. Whether Walsh qualified as a consumer under the Song-Beverly Consumer Warranty Act and the Consumer Legal Remedies Act when he purchased the products for commercial video-game development.
4. Whether Walsh had statutory standing to assert a DMCA claim.
5. Whether California Civil Code section 1670.5 creates an affirmative cause of action for unconscionability.

HOLDINGS

1. The notice of removal was not procedurally defective because a court-admitted attorney signed and filed it, while the other counsel did not sign it and later obtained pro hac vice admission.
2. The court had subject matter jurisdiction because the complaint asserted a federal DMCA claim, the state claims arose from a common nucleus of operative fact, and complete diversity also existed.
3. The complaint failed to state plausible claims for relief because several allegations were conclusory, legally unavailable, insufficiently particularized, or unsupported by a cognizable legal theory.
4. Walsh was not a statutory consumer under either the Song-Beverly Act or the CLRA because he purchased the products primarily for commercial video-game development rather than personal, family, or household purposes.
5. California Civil Code section 1670.5 does not create an affirmative cause of action for unconscionability.
6. Claims dismissed for factual insufficiency were dismissed with leave to amend, while claims barred by legal impossibility, lack of statutory standing, or lack of an affirmative cause of action were dismissed without leave to amend.

KEY QUOTATIONS

“A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable legal theory or insufficient facts pleaded to support an otherwise cognizable legal theory.” (at 8)

“To survive a dismissal motion, a complaint need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short and plain statement of the claim.” (at 8)

“Dismissal can be based on the lack of a cognizable legal theory.” (at 13)

FACTUAL BACKGROUND

Walsh, a California-based video game developer, purchased a Rokoko Smartsuit 1 and gloves in 2020 for use in developing video games. He alleged that the suit was faulty, the gloves disintegrated after several uses, and a mandatory 2023 firmware update destroyed the suit. He further alleged that Rokoko refused to repair the products and eventually discontinued support, causing economic and production-related harm.

PROCEDURAL HISTORY

Walsh filed the action in state court on May 12, 2025, and Rokoko removed it on June 12, 2025. The district court denied the motion to strike and concluded that it had federal-question jurisdiction based on the DMCA claim, supplemental jurisdiction over the state claims, and diversity jurisdiction. The court granted Rokoko's motion to dismiss: eight claims were dismissed with leave to amend and six were dismissed without leave to amend. Walsh was given twenty-one days to file an amended complaint, with dismissal with prejudice to follow if he failed to timely amend.

DISPOSITION

dismissed

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Singer v. State Farm Mutual Automobile Insurance Co., 116 F.3d 373, 377 (9th Cir. 1997)
- Sinochem International Co. v. Malaysia International Shipping Corp., 549 U.S. 422, 430-31 (2007)
- TNT Bestway Transportation, Inc. v. Whitworth, No. 05-96-01900-CV, 1999 WL 374158, at *6 (Tex. Ct. App. June 10, 1999)
- Kokkonen v. Guardian Life Insurance Co. of America, 511 U.S. 375, 377 (1994)
- Fifty Associates v. Prudential Insurance Co. of America, 446 F.2d 1187, 1190 (9th Cir. 1970)
- Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)
- Corral v. Select Portfolio Servicing, Inc., 878 F.3d 770, 773-74 (9th Cir. 2017)
- City of Chicago v. International College of Surgeons, 522 U.S. 156, 165 (1997)
- Hertz Corp. v. Friend, 559 U.S. 77, 95-97 (2010)
- Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990)
- Porter v. Jones, 319 F.3d 483, 494 (9th Cir. 2003)
- Lee v. City of Los Angeles, 250 F.3d 668, 679 (9th Cir. 2001)
- Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001)
- Manzarek v. St. Paul Fire & Marine Insurance Co., 519 F.3d 1025, 1031 (9th Cir. 2008)

- Schreiber Distributing Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)
- Carrico v. City and County of San Francisco, 656 F.3d 1002, 1008 (9th Cir. 2011)
- CRST Van Expedited, Inc. v. Werner Enterprises, Inc., 479 F.3d 1099, 1108 (9th Cir. 2007)
- Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th 1134, 1153 (2003)
- Mexia v. Rinker Boat Co., 174 Cal. App. 4th 1297, 1303 (2009)
- Yumul v. Smart Balance, Inc., 733 F. Supp. 2d 1117, 1122-23 (C.D. Cal. 2010)
- Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003)
- Cooper v. Pickett, 137 F.3d 616, 627 (9th Cir. 1998)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007)
- Dean Witter Reynolds, Inc. v. Superior Court, 211 Cal. App. 3d 758, 766 (1989)
- Bezaire v. Ramirez, 12 Cal. App. 3d 873, 893 (1970)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)
- Schneider v. California Department of Corrections, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998)
- Gottschalk v. City and County of San Francisco, 964 F. Supp. 2d 1147, 1157 (N.D. Cal. 2013)

OPINION

O 1 2 3 4 5 6 7 8 United States District Court 9 Central District of California 10 11 MATTHEW R. WALSH, Case № 2:25-cv-05340-ODW (RAOx) 12 Plaintiff, ORDER GRANTING 13 v. DEFENDANT’S MOTION TO DISMISS [42]; AND DENYING 14 ROKOKO ELECTRONICS et al., PLAINTIFF’S MOTION TO STRIKE 15 Defendants.

[49] 16 17 I. INTRODUCTION 18 Plaintiff Matthew R. Walsh initiated this action in state court against Defendant 19 Rokoko Electronics, asserting various claims arising from Walsh’s purchase of several 20 Rokoko motion capture products. (Notice Removal (“NOR”) Ex. 1 (“Compl.”), Dkt. 21 No. 1-1.)

On June 12, 2025, Rokoko removed the case to this Court. (NOR, Dkt. 22 No. 1.) Rokoko now moves to dismiss all fourteen of Walsh’s claims. (Mot. Dismiss 23 (“MTD”), Dkt. No. 42.) Walsh, in turn, moves to strike Rokoko’s Notice of Removal 24 for procedural defects and lack of subject matter jurisdiction. (Mot. Strike (“MTS”), 25 Dkt. No. 49.)

For the reasons discussed below, the Court GRANTS Rokoko’s Motion 26 to Dismiss and DENIES Walsh’s Motion to Strike.¹ 27 28 1 Having carefully considered the papers filed in connection with the Motions, the Court deemed the matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. 1 II. BACKGROUND 2 All factual references derive from Walsh’s Complaint or attached exhibits, and 3 well-pleaded factual allegations are accepted as true only for purposes of Rokoko’s 4 Motion to Dismiss, and not Walsh’s Motion to Strike.

See *Ashcroft v. Iqbal*, 556 U.S. 5 662, 678 (2009); *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 6 1997) (holding that a district court considering whether it has subject matter 7 jurisdiction may “consider facts in the removal petition” and other 8 “summary-judgment-type evidence”). 9 Walsh is a California-based video game developer.

(Compl. 5.)² In 2020, 10 Walsh purchased products from Rokoko, a motion capture hardware company with 11 offices in Denmark, Greece, and the United States. (Id. at 2, 5, 19–20.) Specifically, 12 Walsh purchased a “Smartsuit 1” and “gloves.” (Id. at 19–22.) Rokoko sold these 13 products with a one-year warranty. (Id. at 23.) 14 Upon delivery, the Smartsuit 1 was “faulty” and the “gloves began 15 disintegrating after only a few uses.” (Id. at 20.)

In 2023, Rokoko also released a 16 mandatory firmware update that destroyed Walsh’s Smartsuit 1. (Id.) Although 17 Walsh continued to reach out to Rokoko for assistance, Rokoko refused to repair the 18 products despite knowing the exact issue affecting them. (Id. at 21, 22.) Rokoko 19 eventually removed support for the Smartsuit 1, rendering Walsh’s purchase useless 20 and severely delaying progress on his video game production.

(Id. at 12, 22.) 21 On May 12, 2025, Walsh brought this action against Rokoko in state court. 22 (NOR 1.) Walsh brings fourteen claims: (1) tortious interference with prospective 23 economic advantage; (2) violation of California’s Song-Beverly Consumer Warranty 24 Act (“Song-Beverly Act”); (3) false advertising; (4) deceptive business practices; 25 (5) unfair competition; (6) violation of California’s Consumer Legal Remedies Act 26 (“CLRA”); (7) misappropriation of intellectual property; (8) intellectual property 27 28 2 Walsh does not sequentially number the paragraphs in his Complaint.

As such, the Court cites to the Complaint by page number. 1 infringement; (9) violation of the federal Digital Millennium Copyright Act 2 (“DMCA”); (10) unconscionable contract terms; (11) fraud in inducement to contract 3 and purchase; (12) fraudulent misrepresentation to investors; (13) fraudulent 4 concealment; and (14) illegal deployment of code and privacy violations under both 5 federal and California law.³ (Compl.

11–77.) 6 On June 12, 2025, Rokoko removed the action to this Court. (NOR.) Rokoko 7 now moves to dismiss Walsh’s Complaint. (Mot. Dismiss.) Walsh also moves to 8 strike the Notice of Removal, which effectively seeks remand of this action (Mot. 9 Strike.) 10 III. WALSH’S MOTION TO STRIKE 11 The Court considers Walsh’s Motion to Strike first as it challenges this Court’s 12 subject matter jurisdiction.

See *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 13 549 U.S. 422, 430–31 (2007) (“[A] federal court generally may not rule on the merits 14 of a case without first determining that it has jurisdiction over the category of claim in 15 suit (subject-matter jurisdiction).”). 16 Walsh moves to strike Rokoko’s Notice of Removal on several grounds.

First, 17 Walsh contends that the Notice of Removal is procedurally defective because 18 Rokoko's counsel are not permitted to practice before this Court. (MTS 5.) Second, 19 Walsh alleges that the Court lacks subject matter jurisdiction due to lack of diversity 20 of citizenship. (Id.) 21 A. Procedural Defect 22 First, the Court finds no defect in Rokoko's Notice of Removal.

Katherine J. 23 Ellena, one of Rokoko's counsel, is a member of this Court's Bar. She both signed 24 and filed the Notice of Removal. (NOR 6.) Thus, she satisfied Federal Rule of Civil 25 Procedure ("Rule") 11's requirement that every paper "be signed by at least one 26 attorney of record in the attorney's name," and she took responsibility for the contents 27 3 Walsh skipped over this cause of action when numbering his claims.

(Compl. 55–56.) To avoid 28 confusion with the eleventh through thirteenth causes of action, the Court numbers this cause of action as Walsh's fourteenth. 1 of the Notice of Removal. See C.D. Cal. L.R. 5-4.3.4(c). While Michael Galibois and 2 Emily Graue, Rokoko's other counsel of record, were not yet eligible to practice 3 before this Court at the time Rokoko removed, they did not sign the Notice of 4 Removal.

Moreover, they clearly stated in the Notice of Removal that their pro hac 5 vice applications were forthcoming, applications the Court later approved. (Orders 6 Pro Hac Vice, Dkt. Nos. 21, 22.) This procedure is routine practice and takes place in 7 courts throughout the country. See, e.g., TNT Bestway Transp., Inc. v. Whitworth, 8 No. 05-96-01900-CV, 1999 WL 374158, at *6 (Tex.

Ct. App. June 10, 1999) 9 (collecting cases). Walsh's arguments regarding Rokoko's counsel's inability to 10 practice before this Court are unpersuasive and not a basis to strike the Notice of 11 Removal. 12 B. Subject Matter Jurisdiction 13 Although Walsh explicitly states that this "is not a motion to remand," his 14 subject matter jurisdiction argument and requested remedy—remand to state court— 15 can only be viewed as a motion to remand.

(MTS 3.) Thus, the Court will construe 16 the remainder of Walsh's Motion to Strike as a Motion to Remand on the basis that 17 the Court lacks subject matter jurisdiction. See *Erickson v. Pardus*, 551 U.S. 89, 94 18 (2007) ("A document filed pro se is to be liberally construed." (citation modified)). 19 Federal courts are courts of limited jurisdiction and possess only that 20 jurisdiction as authorized by the Constitution and federal statute.

Kokkonen v. 21 Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). Under 28 U.S.C. § 1441(a), 22 a party may remove a civil action brought in a state court to a district court only if the 23 plaintiff could have originally filed the action in federal court. Federal district courts 24 have original jurisdiction where an action arises under federal law, or where each 25 plaintiff's citizenship is diverse from each defendant's citizens (i.e., diversity is 26 "complete"), and the amount in controversy exceeds \$75,000.

28 U.S.C. §§ 1331, 27 1332(a). 28 1 There is a strong presumption that a court is without jurisdiction until 2 affirmatively proven otherwise. *Fifty Assocs. v. Prudential Ins. Co. of Am.*, 446 F.2d 3 1187, 1190 (9th Cir. 1970); see *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) 4 (“Federal jurisdiction must be rejected if there is any doubt as to the right of removal 5 in the first instance.”).

When an action is removed from state court, the removing 6 party bears the burden of demonstrating that removal is proper. *Corral v. Select 7 Portfolio Servicing, Inc.*, 878 F.3d 770, 773 (9th Cir. 2017). Removal is strictly 8 construed, and any doubt as to removal is to be resolved in favor of remand. *Id.* 9 at 773–74. 10 As an initial matter, although Rokoko removed based on diversity jurisdiction, 11 (NOR ¶ 6), the Court finds that it has federal question jurisdiction because Walsh 12 brings a cause of action under the federal DMCA, (Compl.

47–49). And because the 13 Court has original jurisdiction over Walsh’s DMCA claim, the Court has 14 “supplemental jurisdiction over all” of Walsh’s state law claims because they “derive 15 from a common nucleus of operative fact.” 28 U.S.C. § 1367; *City of Chicago v. Int’l 16 Coll. of Surgeons*, 522 U.S. 156, 165 (1997). 17 The Court also has diversity jurisdiction because Rokoko is a citizen of 18 Delaware and Denmark, and not California.

Under 28 U.S.C. § 1332(c), “a 19 corporation shall be deemed to be a citizen of every State and foreign state by which it 20 has been incorporated and of the State of foreign state where it has its principal place 21 of business.” Courts use the “nerve center” test to determine a corporation’s principal 22 place of business. *Hertz Corp. v. Friend*, 559 U.S. 77, 95–97 (2010).

Here, Rokoko 23 submits evidence that it is incorporated in Delaware, (Decl. Mikkel Overby ISO NOR 24 (“Overby Decl.”) Ex. A (“Rokoko Articles of Incorporation”), Dkt. No. 1-4.), and that its 25 principal place of business is in Denmark, (see, e.g., Decl. Mikkel Overby ISO Opp’n 26 MTS (“Overby Decl. ISO Opp’n MTS”) ¶ 3, Dkt. No. 62-1). None of Walsh’s 27 evidence disturbs these conclusions, but rather, appear to go toward personal 28 jurisdiction, rather than subject matter jurisdiction.

1 The Court finds that it has subject matter jurisdiction in this matter. Therefore, 2 the Court DENIES Walsh’s Motion to Strike in its entirety. 3 IV. ROKOKO’S MOTION TO DISMISS 4 Rokoko moves to dismiss Walsh’s fourteen causes of action under 5 Rule 12(b)(6). (MTD.) 6 A. Legal Standard 7 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable 8 legal theory or insufficient facts pleaded to support an otherwise cognizable legal 9 theory.

Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988). To 10 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading 11 requirements of Rule 8(a)(2) —a short and plain statement of the claim. *Porter v. 12 Jones*, 319 F.3d 483, 494 (9th Cir. 2003).

The factual “allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 14 550 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Iqbal*, 16 556 U.S. at 678 (2009) (internal quotation marks omitted).

The determination of whether a complaint satisfies the plausibility standard is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679. A court is generally limited to the pleadings and must construe all “factual allegations set forth in the complaint... as true and... in the light most favorable” to the plaintiff.

Lee v. City of Los Angeles, 22 250 F.3d 668, 679 (9th Cir. 2001). However, a court need not blindly accept conclusory allegations, unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Where a district court grants a motion to dismiss, it should generally provide leave to amend unless it is clear the complaint could not be saved by any amendment.

See Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Leave to amend may be denied when “the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir.

1986). Thus, leave to amend “is properly denied... if amendment would be futile.” *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011). B. Discussion The Court notes at the outset that it will not consider any new fact that Walsh raises in his opposition brief. *Schneider v. Cal. Dep’t of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir.

1998) (“In determining the propriety of a Rule 12(b)(6) dismissal, a court may not look beyond the complaint to a plaintiff’s moving papers, such as a memorandum in opposition to a defendant’s motion to dismiss.” (emphasis omitted)). 1. Tortious Interference (Count 1) Walsh’s first cause of action is tortious interference with prospective economic advantage.

(Compl. 11–18.) Under California law, to assert a claim for intentional interference with prospective economic advantage, a plaintiff must allege: (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) the defendant’s intentional acts “designed to disrupt the relationship”; (4) “actual disruption of the relationship”; and (5) “economic harm to the plaintiff proximately caused” by the defendant’s acts.

CRST Van Expedited, Inc. v. Werner Enters., Inc., 479 F.3d 1099, 1108 (9th Cir. 2007) (quoting *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153 (2003)). Here, Walsh’s tortious interference claim fails because he does not plausibly plead that Rokoko was aware of

any relationship between Walsh and a third party. 25 Walsh alleges that Rokoko “was aware of [Walsh’s] video game...

[Walsh’s] 26 professional productions... and that [Walsh] has valid contracts.” (Compl. 13.) This 27 conclusory allegation is simply not “sufficient factual matter” to plausibly allege that 28 Rokoko had actual knowledge of any contract between Walsh and some third party. 1 *Iqbal*, 556 U.S. at 678.

Moreover, the Court cannot determine, based on this 2 allegation alone, with what economic relationship Rokoko allegedly interfered. Thus, 3 the Court DISMISSES Walsh’s first cause of action WITH LEAVE TO AMEND, 4 as this pleading deficiency goes to factual insufficiency rather than legal impossibility. 5 *Schreiber*, 806 F.2d at 1401. 6 2. Violation of Song-Beverly Act (Count 2) 7 Walsh’s second cause of action is for violation of the Song-Beverly Act.

8 (Compl. 19–24.) Under the Song-Beverly Act, “every retail sale of ‘consumer goods’ 9 in California includes an implied warranty by the manufacturer and the retail seller 10 that the goods are ‘merchantable.’” *Mexia v. Rinker Boat Co.*, 174 Cal. App. 4th 11 1297, 1303 (2009) (citing Cal. Civ. Code §§ 1791.3, 1792). “Consumer goods” are 12 “any new product or part thereof that is used, bought, or leased for use primarily for 13 personal, family, or household purposes.” *Id.* § 1791(a).

14 Here, Walsh’s claim fails as a matter of law because he purchased Rokoko’s 15 products not for “personal, family, or household purposes,” *id.*, but rather with the 16 intention of developing video games for commercial gain. Walsh’s Complaint is rife 17 with allegations that Rokoko’s actions damaged Walsh’s economic prospects with 18 third parties. (See, e.g., Compl.

8, 10.) Walsh even alleges that Defendant’s “willful 19 violations of the Song-Beverly Act” have caused him “unrecoverable damages,” 20 including the inability to exploit the video game for economic gain. (*Id.* at 15.) 21 The Court finds that Walsh fails to state a claim under the Song-Beverly Act 22 because he did not purchase “consumer goods.” Thus, the Court DISMISSES 23 Walsh’s second cause of action WITHOUT LEAVE TO AMEND as no amendment 24 could cure these deficiencies.

Schreiber, 806 F.2d at 1401. 25 3. False Advertising (Count 3) 26 Walsh’s third cause of action is violation of California’s False Advertising Law 27 (“FAL”). (Compl. 24–26.) The FAL prohibits making any “statement,” in connection 28 with the sale of personal property, “which is untrue or misleading, and which is 1 known, or which by the exercise of reasonable care should be known, to be untrue or 2 misleading.” Cal. Bus. & Prof.

Code § 17500. Courts have held that because the FAL 3 is grounded in fraud, a plaintiff must allege facts with sufficient particularity to satisfy 4 Rule 9(b)’s heightened pleading standard. See *Yumul v. Smart Balance, Inc.*, 733 F. 5 Supp. 2d 1117, 1122–23 (C.D. Cal. 2010).

Under Rule 9(b), a complaint must plead 6 “‘the who, what, when, where, and how’ of the misconduct charged.” *Vess v. 7 Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting *Cooper v. 8 Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)). 9 Walsh fails to allege sufficient facts.

The gravamen of Walsh’s false advertising 10 allegation is that Rokoko offers express warranties but revokes these warranties 11 through “unattached and unconscionable contract terms.” (Compl. 25.) However, 12 other than Walsh’s allegation that Rokoko “sells high-dollar products with an express 13 warranty,” (Compl. 25), he alleges no facts to support his assertions.

Walsh does not 14 provide “who, what, when, where, and how” of Walsh’s misconduct. *Vess*, 317 F.3d 15 at 1106. 16 Thus, the Court DISMISSES Walsh’s third cause of action WITH LEAVE TO 17 AMEND as the deficiency goes to factual sufficiency rather than legal impossibility. 18 4. Deceptive Business Practices, UCL, and CLRA (Counts 4–6) 19 The Court examines the fourth, fifth and sixth causes of action together because 20 they are related.

21 Walsh’s fourth cause of action is for “deceptive business practices.” 22 (Compl. 26–31.) He cites California Civil Code section 1580, (*id.* at 27), which 23 provides for mutuality of consent in contract formation and is a tool for courts to 24 interpret contracts. It does not confer any cause of action.

However, the CLRA, 25 under which Walsh brings his sixth cause of action, does bar “unfair methods of 26 competition and unfair or deceptive acts or practices.” Cal. Civ. Code § 1770(a). 27 Thus, in the interest of liberally construing Walsh’s Complaint, the Court considers the 28 fourth and sixth causes of action as both brought under the CLRA. See *Erickson*, 1 551 U.S. at 94 (requiring courts to liberally construe pro se filings).

The Court also 2 considers the fifth cause of action, brought under the UCL, because Walsh predicates 3 this claim on a CLRA violation. (Compl. 32.) 4 A CLRA claim may only be brought by a “consumer.” See Cal. Civ. Code 5 § 1780 (“Any consumer who suffers any damage as a result of the use or employment 6 by any person of a method, act, or practice [prohibited by the CLRA] may bring an 7 action against that person.”).

Similar to the Song-Beverly Act, the CLRA defines a 8 consumer as “an individual who seeks or acquires, by purchase or lease, any goods or 9 services for personal, family, or household purposes.” *Id.* § 1761(d). 10 For the same reasons the Court dismissed Walsh’s Song-Beverly Act claim, the 11 Court also finds that Walsh is not a consumer under the CLRA. He bought Rokoko’s 12 products with the intention of commercializing his own products.

(See Compl. 12 13 (alleging that Rokoko “knew at all times that [Walsh] was producing a video game”).) 14 Even when construing the facts in the light most favorable to Walsh, *Lee*, 250 F.3d 15

at 679, Walsh's attempt to rationalize his purchase as "learning game development" is 16 unreasonable and unconvincing, (Opp'n MTD 21–22, Dkt. No. 57).

Thus, Walsh 17 cannot bring a CLRA claim, and the Court DISMISSES Walsh's fourth and sixth 18 causes of action WITHOUT LEAVE TO AMEND. Moreover, as Walsh explicitly 19 predicates his UCL claim on a CLRA and a Song-Beverly violation, (Compl. 32), the 20 Court also DISMISSES Walsh's fifth cause of action for violation of the UCL 21 WITHOUT LEAVE TO AMEND. 22 5.

Misappropriation/Infringement of Intellectual Property (Counts 7–8) 23 The Court examines the seventh and eighth causes of action together because 24 they both involve intellectual property claims. In his seventh cause of action, Walsh 25 alleges that Rokoko misappropriated intellectual property. (Compl. 33–43.)

In his 26 eighth cause of action, Walsh alleges Rokoko infringed intellectual property. (Id. 27 at 43–47.) The Court cannot discern what the "intellectual property" is that Walsh 28 alleges Rokoko misappropriated or infringed.

Thus, the Court DISMISSES Walsh's 1 seventh and eighth causes of action WITH LEAVE TO AMEND. If Walsh reasserts 2 these causes of action in an amended pleading, he must state, with particularity, what 3 intellectual property Walsh owns (be it trade secret, copyright, trademark, etc.), how 4 Rokoko misappropriated or infringed it, and the resulting damages to Walsh.

5 6. Violation of the DMCA (Count 9) 6 Walsh's ninth cause of action is for violation of the DMCA. (Compl. 47–49.) 7 Section 1201 of the DMCA prohibits circumvention of "technological measure[s] that 8 effectively control[] access to" works protected by the DMCA. 17 U.S.C § 1201. 9 Section 1202 prohibits, among other things, falsifying, altering, or removing copyright 10 management information ("CMI").

Id. § 1202(a)–(b). CMI is information that could 11 tend to identify the true title or author of a copyrighted work. See id. § 1202(c). Only 12 people "injured by a violation of section 1201 or [section] 1202 may bring a civil 13 action" for such violation. Id. § 1203. 14 Walsh's DMCA claim fails because he has not established that he has statutory 15 standing to assert the claim.

Although he alleges that Rokoko transmits, removes, and 16 modifies metadata, (Compl. 47–49), he fails to establish that he is the author of any 17 copyrighted work, let alone that Rokoko modified any metadata that may have caused 18 him injury.

Thus, the Court DISMISSES Walsh's ninth cause of action WITH 19 LEAVE TO AMEND. 20 7. Unconscionable Contract Terms (Count 10) 21 Walsh's tenth cause of action asserts "unconscionable contract terms" under 22 California Civil Code section 1670.5. (Compl. 49–54.)

However, this code section 23 “does not create an affirmative cause of action.” *Dean Witter Reynolds, Inc. v. 24 Superior Court*, 211 Cal. App. 3d 758, 766 (1989). Instead, the section empowers trial 25 courts to “refuse to enforce” an unconscionable contract term, for instance, in a breach 26 of contract case. *Id.* Thus, the Court DISMISSES Walsh’s tenth cause of action 27 WITHOUT LEAVE TO AMEND.

28 1 8. Fraud-Based Claims (Counts 11–12) 2 Walsh’s eleventh and twelfth causes of action are both fraud-based claims: 3 fraud in the inducement and fraudulent misrepresentation. (Compl. 56–71.) As noted 4 earlier, plaintiffs alleging fraud must satisfy Rule 9(b), which requires plaintiffs to 5 plead “‘the who, what, when where, and how’ of the misconduct charged.” *Vess*, 6 317 F.3d at 1106.

7 Walsh fails to satisfy Rule 9(b)’s heightened pleading requirement for either of 8 these claims. In his eleventh cause of action, fraud in the inducement, Walsh simply 9 states that “consumers were provided an alternate reality from actuality.” 10 (Compl. 56.) Walsh does not explain specifically plead the “who, what, when, where, 11 and how” of the alleged fraudulent inducement sufficient to satisfy Rule 9(b).

Vess, 12 317 F.3d at 1106. In his twelfth cause of action, fraudulent misrepresentation to 13 investors, Walsh several specific statements by Rokoko, (Compl. 67–68), but fails to 14 plausibly plead how he relied on these statements and how these statements caused 15 him injury. *Bezaire*, 12 Cal. App. 3d at 893. Simply stating that he was “exposed” to 16 Rokoko’s misrepresentations and pronouncing that “harm is well established,” is not 17 enough to carry Walsh’s burden to plead fraud with particularity as required under 18 Rule 9(b), especially when some of these statements were made after he purchased the 19 products here.

20 Thus, the Court DISMISSES Walsh’s eleventh and twelfth causes of action 21 WITH LEAVE TO AMEND. 22 9. Fraudulent Concealment (Count 13) 23 While Walsh’s thirteenth cause of action, fraudulent concealment, is also a 24 fraud-based claim, the Court addresses it separately because Walsh “asserts he is not 25 seeking damages for fraudulent concealment.” (Compl.

71.) Instead, he asks the 26 Court only to “recognize it, and [its] evidence as a matter of record and while making 27 decisions upon this case.” (*Id.*) As Walsh admits that he does not seek redress for this 28 claim, or that he suffered any injury, the Court finds that Walsh has no standing to 1 bring this claim and DISMISSES Walsh’s thirteenth cause of action WITHOUT 2 LEAVE TO AMEND.

See *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) 3 (holding that a plaintiff must demonstrate that it is “likely” that his “injury will be 4 redressed by a favorable decision”). 5 10. Illegal Deployment of Code and Privacy Violations (Count 14) 6 Walsh’s fourteenth and final cause of action is for “illegal deployment of code 7 and privacy violations.” (Compl.

55–56.) He generally alleges that Rokoko created a 8 “secret backdoor” within Walsh’s software, allowing Rokoko to “send remote-client 9 side code of any type.” (Id.) Walsh cites five different statutes as the bases for this 10 cause of action: (1) 18 U.S.C. § 1030, (2) 18 U.S.C. § 2510, (3) California Penal Code 11 section 502, (4) California Penal Code section 631, and (5) California Consumer 12 Privacy Act.

13 This claim fails because the Court cannot discern what legal theory Walsh is 14 attempting to advance. See *Balistreri*, 901 F.2d at 699 (“Dismissal can be based on 15 the lack of a cognizable legal theory.”); see also *Gottschalk v. City & County of San 16 Francisco*, 964 F. Supp. 2d 1147, 1157 (N.D. Cal. 2013) (dismissing in part because 17 “Plaintiff cites a number of legal theories for the same claim”).

18 Thus, the Court DISMISSES Walsh’s fourteenth cause of action WITH 19 LEAVE TO AMEND. If Walsh chooses to amend this claim, Walsh must also 20 identify under which statute he brings this claim. 21 V. CONCLUSION 22 For the reasons discussed above, the Court DENIES Walsh’s Motion to Strike, 23 (Dkt. No. 49), and GRANTS Rokoko’s Motion to Dismiss, (Dkt. No. 42).

24 Specifically, the Court dismisses Walsh’s first, third, seventh, eighth, ninth, eleventh, 25 twelfth, and fourteenth causes of action WITH LEAVE TO AMEND. The Court 26 dismisses Walsh’s remaining causes of action WITHOUT LEAVE TO AMEND. 27 If Walsh chooses to file a First Amended Complaint, he must do so no later 28 than twenty-one (21) days from the date of this order, and Rokoko shall answer or 1 || otherwise respond no later than fourteen (14) days of the filing.

Failure by Walsh to 2 || timely amend will result in dismissal of this action with prejudice. 3 The Court admonishes Walsh that any amended pleadings must adhere to the 4|| pleading standards set forth in Rule 8(a). Fed. R. Civ. P. 8(a) (“A pleading that states 5 | claim for relief must contain... a short and plain statement of the claim showing 6 || that the pleader is entitled to relief.” (emphasis added)).

7 8 IT IS SO ORDERED. 9 10 December 22, 2025 N. B OTIS D. HT, I 4 UNITED STATES DISTRICT JUDGE 15 16 17 18 19 20 21 22 23 24 25 26 27 28