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16 **IN THE UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **WESTERN DIVISION – LOS ANGELES**

19 NETGEAR, INC.,
20 Plaintiff,
21 vs.
22 HUAWEI TECHNOLOGIES CO.,
23 LTD.,
24 Defendant.

Case No. 2:24-cv-00824 AB(AJRx)
**HUAWEI’S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF ITS PARTIAL
MOTION TO DISMISS**

**REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**

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1 **I. INTRODUCTION**

2 Netgear has turned a routine patent-licensing dispute between two
3 sophisticated parties into an unbounded, ten-count, 113-page complaint rife with
4 tenuous legal and factual claims. Netgear asserts everything from antitrust violations
5 purportedly connected to Huawei’s participation in a Wi-Fi standard-setting body; to
6 RICO claims based on an unrelated action in another federal jurisdiction; to a
7 potpourri of pile-on allegations that Netgear cut and pasted from other complaints to
8 which Netgear was not a party. Netgear plainly hopes to use this action to exert
9 pressure in its ongoing royalty discussions with Huawei. But that cannot justify its
10 approach, including its assertion of claims that are foreclosed by Ninth Circuit law.

11 Through Letters of Assurance in 2007 and 2019 to IEEE, a standards-setting
12 organization (“SSO”) for Wi-Fi networking standards, Huawei agreed to license its
13 standard essential patents (“SEPs”) incorporated into IEEE’s Wi-Fi standards at fair,
14 reasonable, and non-discriminatory (“RAND” or “FRAND”) rates. Compl. ¶¶ 76,
15 82–83. Consistent with its RAND commitments, Huawei repeatedly attempted to
16 engage Netgear in licensing discussions for Huawei’s Wi-Fi patents—sending at
17 least seven separate letters and emails, *id.* ¶¶ 37–38—but Netgear ignored Huawei’s
18 outreach. Only after Huawei filed patent infringement suits against Netgear in
19 Germany and China did Netgear respond; and even then, it refused to take a license
20 at Huawei’s offered rate.

21 Rather than agreeing to a RAND license or seriously engaging in negotiations,
22 Netgear filed this suit, falsely alleging that Huawei’s RAND promises to IEEE were
23 “fraudulent”—and that through these supposedly false commitments Huawei has
24 monopolized hundreds of unspecified Wi-Fi technology markets “worldwide.” *Id.*
25 ¶ 289. Improperly relying on unrelated, unadjudicated allegations lifted directly from
26 other pleadings, Netgear calls this Huawei’s “*modus operandi*” that somehow forms
27 a purported “pattern” of fraud and “racketeering activity.” *Id.* ¶¶ 8, 152. Netgear tries
28 to spin a claim about Huawei’s purported breach of its RAND commitments

1 regarding patents involving Wi-Fi 6 technology into antitrust, RICO, and fraud
2 causes of action. The Court should reject Netgear’s attempt to do so.

3 Netgear fails to plead a relevant market, market power, or antitrust injury,
4 dooming its antitrust claim. This is no surprise: in another case involving a
5 purportedly supra-RAND rate for SEPs, the Ninth Circuit expressly warned that
6 antitrust law should not be used “to remedy what are essentially contractual disputes
7 between private parties engaged in the pursuit of technological innovation”—which
8 is exactly what Netgear attempts here. *FTC v. Qualcomm Inc.*, 969 F.3d 974, 997
9 (9th Cir. 2020) (“*Qualcomm*”). The Ninth Circuit has never recognized an antitrust
10 claim like the one Netgear asserts.

11 As for RICO, Netgear fails to allege any predicate act: it rests its claim on
12 purported “mail and/or wire fraud,” but fails to allege any “fraud”—only promises
13 that it (wrongly) claims Huawei breached, which cannot meet the requisite pleading
14 standard. Netgear’s RICO claim suffers from a host of other problems, including
15 failure to allege (1) any proximately caused injury; (2) a pattern of predicate acts; or
16 (3) distinct members of a RICO enterprise. And Netgear’s Complaint consistently
17 falls below the particularity needed under Rule 9(b)—a failure that dooms its
18 antitrust, RICO, fraud, negligent misrepresentation, and promissory estoppel claims.

19 The Court should dismiss Netgear’s antitrust, RICO, common law fraud,
20 negligent misrepresentation, and promissory estoppel claims (Counts 1–4, 7–9); and,
21 to the extent it is premised on Netgear’s defective antitrust, RICO, and fraud claims,
22 Netgear’s California Unfair Business Practices (“UCL”) claim (Count 10).

23 **II. BACKGROUND**

24 Huawei owns SEPs—patents whose “claims are necessarily infringed by
25 practicing the standards”—on IEEE’s Wi-Fi 6 networking standard. Compl. ¶¶ 3, 54,
26 57, 97. For these patents, Huawei submitted Letters of Assurance to IEEE in 2007
27 and 2019 promising to “grant a license under reasonable rates” on RAND terms. *Id.*
28 ¶¶ 74, 269–70, 272. Netgear makes a variety of “networking technologies” that

1 practice the Wi-Fi 6 standard and which Huawei has asserted infringe its SEPs. *Id.*
2 ¶¶ 14–15, 113.

3 As Netgear alleges, Huawei has attempted to negotiate a license with Netgear
4 for several years, first reaching out to Netgear about a license to its Wi-Fi 6 SEPs on
5 July 9, 2020. *Id.* ¶ 37. Huawei’s July 9 letter asked Netgear “to discuss licensing of
6 Huawei’s Wi-Fi patent portfolio.” *Id.* ¶ 113. Huawei’s letter further explained that
7 Netgear’s products infringed Huawei’s Wi-Fi patents and identified an exemplary list
8 of Huawei’s Wi-Fi patents and Netgear’s infringing products. *Id.* When Netgear
9 failed to respond, Huawei followed up a month later on August 14, and multiple times
10 thereafter in 2020—still without any response from Netgear. *Id.* ¶¶ 114–15.

11 Despite Netgear’s silence, Huawei continued to try to engage over the next
12 two years. As Huawei stated in an April 4, 2022 email, it was “trying to engage with
13 NETGEAR to negotiate a license for the Wi-Fi 6 [SEP] license on fair, reasonable
14 and non-discriminatory terms (‘FRAND’)” and that it was “willing to grant a license
15 to NETGEAR on FRAND terms.” *Id.* ¶ 118. Huawei provided a royalty rate on June
16 25, 2022, for both Wi-Fi 6 and SEPs covering earlier Wi-Fi standards; Netgear
17 declined. *Id.* ¶ 121. Netgear made no counteroffer until nearly a year later in May
18 2023. *Id.* ¶ 126. By that time, Huawei—seeking to protect its patent rights—had sued
19 Netgear for patent infringement in Germany, in China, and, shortly after, in the
20 Unified Patent Court (“UPC”). *Id.* ¶¶ 118, 119, 127, 134.

21 In retaliation, Netgear brought this suit, alleging a “pattern of racketeering
22 activity,” an “illegal pattern of fraud in the United States and globally,” and a
23 “worldwide pattern and scheme to unlawfully manipulate and dominate global
24 markets,” among other salacious-sounding assertions. *Id.* ¶¶ 138–39, 152. The first
25 four counts of Netgear’s Complaint allege monopolization and attempted
26 monopolization in violation of Section 2 of the Sherman Act and civil RICO
27 violations under 18 U.S.C. §§ 1964 and 1962(c)–(d). These claims are predicated on
28 Huawei’s purportedly fraudulent RAND commitments, and Netgear asserts common

1 law and UCL claims based on that same conduct. Each of these is facially deficient.

2 For its antitrust claims, Netgear alleges a market that it calls the “Relevant Wi-
3 Fi Market” covering “ [REDACTED]
4 [REDACTED] *Id.* ¶ 278. As Netgear admits, this market is not a single
5 market, but hundreds of them: “[t]he functionality for the IEEE 802.11 standards
6 provided by each relevant access point or modem Wi-Fi technology . . . comprises
7 its own relevant market for antitrust purposes.” *Id.* Netgear does not explain what
8 these hundreds of technologies are, or what reasonable equivalents existed—and thus
9 cannot plead either a relevant market or Huawei’s market power. This is fatal to a
10 Section 2 claim. Nonetheless, Netgear concludes that Huawei has monopolized each
11 of these [REDACTED] markets by inducing IEEE to incorporate the unidentified technologies
12 into standards through purportedly false Letters of Assurance. *Id.* ¶ 279. As explained
13 below, this alleged conduct does not give rise to any antitrust injury.

14 For its RICO claims, Netgear alleges that Huawei engaged in “mail and/or
15 wire” fraud when making commitments to IEEE. *See id.* ¶ 314. To try to allege a
16 pattern of racketeering activity, Netgear copies and pastes allegations from pleadings
17 in other matters not involving Netgear and which have not been proven, forcing
18 Netgear to rely on “information and belief” (a phrase it uses 112 times in its
19 Complaint). *See id.* ¶¶ 174–86, 201–13, 220–31, 239–53, 255–62, 264, 314–17
20 (allegations copied from other matters); Appendix A (claims made on “information
21 and belief”). Based on these unrelated pleadings involving allegations with no
22 common pattern, Netgear broadly alleges that Huawei made similar “fraudulent
23 commitments to license Huawei’s patents on RAND terms” to other SSOs, like ETSI
24 and ITU-T. Compl. ¶¶ 311, 314. As set forth in Huawei’s concurrently-filed motion
25 to strike (ECF Nos. 76–77), such allegations should be stricken from the Complaint;
26 but even if they are not, Netgear’s attempt to plead RICO liability fails.

27 Netgear alleges that Huawei used “mail and/or wire” in licensing negotiations
28 with other companies. *Id.* ¶ 314. But Netgear does not explain who allegedly used

1 mail and/or wire, where fraud supposedly occurred (whether via mail or wire), or
2 when and how each communication allegedly furthered a fraudulent scheme.
3 Similarly, based solely on unadjudicated pleadings that have nothing to do with Wi-
4 Fi 6, Netgear alleges that Huawei stole trade secrets. *See id.* ¶¶ 258, 317.

5 Netgear alleges that it “has incurred significant fees and costs in investigating
6 and defending against Huawei’s unlawful non-RAND demands” and by “the threat
7 of injunctions.” *Id.* ¶¶ 322–23. Although Netgear has refused to take any license from
8 Huawei, Netgear adds that it “has also been harmed to the extent that the costs of any
9 license or other fees and expenses exceed the value of a RAND license.” *Id.* ¶ 323.

10 **III. LEGAL STANDARD**

11 “Under Rule 12(b)(6), a defendant may move to dismiss a pleading, or portions
12 thereof, for ‘failure to state a claim upon which relief can be granted.’” *Bondit, LLC*
13 *v. Hallows Movie, Inc.*, No. 2:19-cv-9832-AB (RAOx), 2020 WL 7777992, at *2
14 (C.D. Cal. Apr. 1, 2020)). “A plaintiff’s ‘factual allegation[s] must be enough to raise
15 a right to relief above the speculative level.’” *Id.* (quoting *Bell Atl. Corp. v. Twombly*,
16 550 U.S. 544, 555 (2007)). While courts “must make all reasonable inferences in the
17 plaintiff’s favor . . . a court is ‘not bound to accept as true a legal conclusion couched
18 as a factual allegation.’” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

19 “When fraud is alleged, Rule 9(b) heightens the requirements of Rule 8(a) and
20 mandates that the plaintiff ‘state with particularity the circumstances constituting
21 fraud.’” *Bondit*, 2020 WL 7777992, at *2 (citing Fed. R. Civ. P. 9(b)). This
22 heightened standard applies to both fraud and to claims that involve allegations of
23 fraud. *See FTC v. Lights of Am., Inc.*, 760 F. Supp. 2d 848, 852 (C.D. Cal. 2010).

24 **IV. ARGUMENT**

25 **A. Netgear fails to state a claim for monopolization.**

26 *1. Netgear fails to define a relevant market or allege market power.*

27 To make out a monopolization claim, Netgear “must allege both that a
28 ‘relevant market’ exists and that [Huawei] has power within that market.” *Newcal*

1 *Indus., Inc. v. Ikon Office Sol.*, 513 F.3d 1038, 1044 (9th Cir. 2008). A “complaint
2 may be dismissed under Rule 12(b)(6) if the complaint’s ‘relevant market’ definition
3 is facially unsustainable.” *Id.* at 1045. Specifically, Netgear bears the burden of
4 defining a relevant product market by the “interchangeability of use or the cross-
5 elasticity of demand between the product [in question] and substitutes for it.” *Id.*
6 (citation omitted). Cross-elasticity of demand exists between two products when “an
7 increase in the price of one product leads to an increase in demand for another.” *Olin*
8 *Corp. v. FTC*, 986 F.2d 1295, 1298 (9th Cir. 1993).

9 Netgear’s market definition flouts these fundamental principles. Netgear
10 improperly lumps into a single market definition, the “Relevant Wi-Fi Market,”
11 *hundreds* of markets based on *each patent* covering [REDACTED]
12 [REDACTED]. Compl. ¶ 278. In Netgear’s
13 words, the “Relevant Wi-Fi Market” includes:

14 the markets for technologies that, before the IEEE 802.11 and its
15 predecessors were implemented, were competing to perform the
16 various functions alleged to be covered by Huawei’s purported
17 essential patents for the IEEE 802.11 standard and its predecessor Wi-
18 Fi standards (‘Relevant Wi-Fi Market.’) Specifically, [REDACTED]
19 [REDACTED] ... and their reasonable equivalents constitute the Wi-Fi
20 technology market.

21 *Id.* But Netgear does not allege any facts relating to these purported “reasonable
22 equivalents.” Not one. Having failed to identify a single “reasonable equivalent,”
23 Netgear does not (because it cannot) suggest that increases in the price of any (much
24 less each) of these patented technologies led customers to increase demand for any
25 one of these unspecified “equivalents.” Netgear also does not explain which IEEE
26 standards each patent implicates. And other than broadly asserting that these
27 technologies relate to Wi-Fi, Netgear does not identify what these technologies are.
28 Its allegations about the relevant market(s) are “facially unsustainable.”

Godo Kaisha IP Bridge I v. TCL Communication Technology Holdings Ltd.,

1 No. 15-cv-634, 2018 WL 11426956 (D. Del. Feb. 28, 2018) is instructive. There,
2 counter-plaintiff TCL, like Netgear, asserted “in a conclusory fashion” multiple
3 “Relevant Technology Markets” based on certain patents-in-suit, alleging that the
4 relevant market included “Relevant Technology Markets represented by the 2G, 3G
5 [*i.e.*, W-CDMA], and 4G [*i.e.*, LTE] telecommunications standards when 3GPP and
6 ETSI incorporated Panasonic’s SEPs, including the [patents-in-suit].” *Id.*, at *5
7 (brackets in original). But because TCL “fail[ed] to identify any products, explain
8 the geographic market for such products, the products’ interchangeability, or any
9 cross-elasticity of demand,” the court held “no antitrust market [was] pleaded.” *Id.*
10 Netgear’s pleading suffers from the same defects.

11 Netgear highlights these defects by alleging that “[t]he functionality for the
12 IEEE 802.11 standards provided by *each relevant access point or modem Wi-Fi*
13 *technology . . . comprises its own relevant market* for antitrust purposes.” Compl.
14 ¶ 278 (emphasis added). Because Netgear alleges hundreds of access points or
15 modem Wi-Fi technology markets, it must define each by reference to “reasonable
16 interchangeability.” *Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1120 (9th Cir. 2018);
17 *compare Rambus Inc. v. FTC*, 522 F.3d 456, 461 (D.C. Cir. 2008) (addressing “four
18 technology markets” where the “patented technologies compete with alternative
19 innovations to address technical issues relating to DRAM design—markets for
20 latency, burst length, data acceleration, and clock synchronization techniques”).
21 Netgear has not, dooming its monopolization claim.

22 Having failed to sufficiently define a relevant market, Netgear cannot (and
23 does not) allege market power, through “either direct or circumstantial evidence.”
24 *Westlake Servs., LLC v. Credit Acceptance Corp.*, No. 2:15-cv-7490-SJO (MRWX),
25 2015 WL 9948723, at *6 (C.D. Cal. Dec. 7, 2015). Direct proof may be shown by
26 evidence of “restricted output and supracompetitive prices.” *Id.* (citation omitted).
27 Tellingly, Netgear’s Complaint contains no allegations about the prices—the royalty
28 rates—in any of the [REDACTED] technology markets *before* IEEE standardized Huawei’s

1 patents. To show market power by circumstantial evidence, the plaintiff must
2 “(1) define the relevant market, (2) show that the defendant owns a dominant share
3 of that market, and (3) show that there are significant barriers to entry and show that
4 existing competitors lack the capacity to increase their output in the short run.” *Id.*
5 (citation omitted). Netgear makes none of these required allegations.

6 2. *Netgear fails to state a cognizable antitrust injury.*

7 Netgear also fails to plead antitrust injury. Antitrust injury is made up of four
8 elements: “(1) unlawful conduct, (2) causing an injury to the plaintiff, (3) that flows
9 from that which makes the conduct unlawful, and (4) that is of the type the antitrust
10 laws were intended to prevent.” *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190 F.3d
11 1051, 1055 (9th Cir. 1999). “Without a violation of the antitrust laws, there can be
12 no antitrust injury.” *Id.* at 1056.

13 The Ninth Circuit has never recognized an antitrust claim like Netgear’s here.
14 In *FTC v. Qualcomm*, the court addressed a similar Section 2 monopolization claim
15 based on Qualcomm’s alleged breach of a “voluntary contractual commitment” to an
16 SSO. 969 F.3d at 995. There, the FTC alleged that Qualcomm’s “refusal to license”
17 its standard-essential patents to “rival chipmakers violate[d] both its FRAND
18 commitments and . . . § 2 of the Sherman Act.” *Id.* at 987. The Ninth Circuit rejected
19 that claim out of hand. Even if refusing to license rival chipmakers allowed
20 Qualcomm to collect higher royalties from its rivals’ customers, the court reasoned
21 that those alleged harms were to Qualcomm’s rivals’ *customers*, not to the rival
22 chipmakers. *Id.* at 995–96. And “to make out a § 2 violation, the anticompetitive
23 harm identified must be to *competition itself*, not merely to competitors.” *Id.* at 996.
24 The court emphasized that the “hammer of antitrust law” was less equipped “to
25 handle commercial disputes between the world’s most sophisticated companies about
26 FRAND agreements” than “the rules of contract and patent law.” *Id.* at 997.
27 Accordingly, the Ninth Circuit “decline[d] to hold that Qualcomm’s alleged breach
28 of its SSO commitments to license its SEPs on FRAND terms . . . amounted to

1 anticompetitive conduct in violation of § 2.” *Id.*

2 Netgear attempts to avoid *Qualcomm* based on Huawei’s purported fraud on
3 IEEE. *E.g.*, Compl. ¶¶ 279, 281. But Netgear’s threadbare fraud allegations do not
4 salvage its claim. “Deceptive conduct—like any other kind—must have an
5 anticompetitive effect in order to form the basis of a monopolization claim.” *Rambus*,
6 522 F.3d at 464. “Even if deception raises the price secured by a seller, but does so
7 without harming competition, it is beyond the antitrust laws’ reach.” *Id.*; *see also*
8 *Huawei Techs., Co. v. Samsung Elecs. Co.*, 340 F. Supp. 3d 934, 955 (N.D. Cal.
9 2018) (citing *Rambus* and holding even if “Huawei made intentionally false promises
10 to ETSI,” “it would still be insufficient to establish unlawful exclusionary conduct.”).

11 In *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128 (1998), the Supreme Court
12 made clear that an “otherwise lawful monopolist’s use of deception simply to obtain
13 higher prices normally has no particular tendency to exclude rivals and thus to
14 diminish competition.” *Rambus*, 522 F.3d at 464 (describing *NYNEX*). There, the
15 plaintiff Discon alleged that through a fraudulent scheme against New York
16 regulators, NYNEX and its subsidiaries attempted to drive Discon out of the market
17 for the service of removing outdated telephone switching equipment (“removal
18 services”). *NYNEX*, 525 U.S. at 131–32. New York Telephone Company, a NYNEX
19 subsidiary and lawful monopoly provider of local telephone services, began
20 purchasing removal services from a higher-priced firm, AT&T. *Id.* New York
21 Telephone would pass the higher fees on to customers through higher rates approved
22 by regulators. *Id.* at 132. AT&T would then provide a rebate to New York Telephone,
23 shared with NYNEX. *Id.* A unanimous Court “concede[d] Discon’s claim” that
24 NYNEX’s behavior “hurt consumers by raising telephone service rates.” *Id.* at 136.
25 That “consumer injury,” however, “naturally flowed” not so much from a less
26 competitive market for removal services, as from the exercise of market power that
27 is *lawfully* in the hands of a monopolist, namely, New York Telephone, combined
28 with a deception worked upon the regulatory agency that prevented the agency from

1 controlling New York Telephone’s exercise of its monopoly power.” *Id.*

2 Relying on *NYNEX*, the D.C. Circuit in *Rambus Inc. v. FTC* rejected an
3 antitrust claim materially identical to Netgear’s. 522 F.3d at 465. There, the FTC
4 alleged that during the standardization process, “Rambus breached [the SSO’s]
5 policies requiring it to disclose patent interests related to standardization efforts and
6 that the disclosures it did make were misleading,” and that by doing so, it “unlawfully
7 monopolized four technology markets.” *Id.* at 461. After the FTC held Rambus’s
8 conduct anticompetitive, the D.C. Circuit reversed. *Id.* at 464. No “cognizable
9 violation of the Sherman Act” existed, the *Rambus* court explained, “when a lawful
10 monopolist’s deceit has the effect of raising prices (without an effect on competitive
11 structure).” *Id.* at 466; *Qualcomm*, 969 F.3d at 999–1000 (citing *Rambus* for
12 proposition that no anticompetitive harm existed where alleged conduct “had no
13 direct impact on competition in [the relevant] markets”); *see also Cont’l Auto. Sys.,*
14 *Inc. v. Avanci, LLC*, 485 F. Supp. 3d 712, 735 (N.D. Tex. 2020) (holding that the
15 “allegedly fraudulent FRAND declarations to the SSOs do not constitute
16 anticompetitive conduct” because that deception caused only “harms to competitors,
17 rather than to the competitive process itself”), *aff’d*, 2022 WL 2205469, at *1 (5th
18 Cir. June 21, 2022); *Vizio, Inc. v. Funai Elec. Co.*, No. 8:09-cv-174-AHM (RCX),
19 2010 WL 7762624, at *5 (C.D. Cal. Feb. 3, 2010) (similar).

20 The same applies here. The crux of Netgear’s antitrust claim is that Huawei’s
21 alleged deceit to IEEE may cause Netgear to face higher royalty rates for Huawei’s
22 patented Wi-Fi technologies. *See* Compl. ¶ 280 (“Huawei is thus attempting to
23 exploit its undue monopoly power by attempting to extract supracompetitive royalty
24 rates from NETGEAR . . .”). In other words, Netgear alleges only that as one of
25 Huawei’s *customers*, it faces higher prices—not that it has been harmed as a
26 *competitor* in developing Wi-Fi technologies. *Id.* ¶ 290 (“[C]ustomers of the
27 Relevant Wi-Fi Market (implementers of the standards such as NETGEAR) face
28 drastically higher costs for access to Wi-Fi technologies.”) (emphasis added). But

1 those are not harms to *competition*. See, e.g., *Qualcomm*, 969 F.3d at 999 (finding
2 no antitrust injury where “the primary harms the district court identified” related to
3 claim of supracompetitive licensing of intellectual property were to “Qualcomm’s
4 *customers*, not its *competitors*”). The antitrust laws are designed to protect
5 competition and not competitors; courts routinely dismiss cases on this basis. See,
6 e.g., *Am. Bd. of Internal Med. v. Mittman*, No. 8:08-cv-929-AGM (LGX), 2008 WL
7 11342719, at *2 (C.D. Cal. Dec. 8, 2008) (granting motion to dismiss Sherman Act
8 claims for failure to plead harm to competition); *Vizio*, 2010 WL 7762624, at *5
9 (similarly granting motion to dismiss Sherman Act § 2 claim).

10 Netgear attempts to manufacture antitrust injury in two ways. First, Netgear
11 claims there is “harm to legitimate competition” because of “increasing barriers to
12 entry such that potential competitors who would or *might have produced products*
13 based on the IEEE standards have been dissuaded from doing so.” Compl. ¶ 290
14 (emphasis added). Second, Netgear alleges that the “antitrust injuries . . . extend to
15 consumers in the downstream market for the technology . . . in the form of higher
16 prices, reduced innovation, and more limited choice for such standard-compliant
17 products.” *Id.* ¶ 291. Both allegations run headlong into the Ninth Circuit’s
18 *Qualcomm* decision.

19 As the court explained there, in determining antitrust injury, the analysis must
20 be based on the relevant pleaded market, 969 F.3d at 992–93—here, the *technology*
21 *markets*, not the downstream *product markets* that incorporate those technologies
22 (and in which Huawei does not even compete, as it does not sell implementing
23 products in the United States). Netgear’s Complaint does not identify any
24 competitors who were developing patents or proposing alternatives to Huawei’s Wi-
25 Fi technologies—for standardization by IEEE or otherwise. That is unsurprising
26 given, as explained above, Netgear’s facially insufficient market definition comprises
27 hundreds of patents. In short, Netgear’s alleged harms, “even if real, are not
28 ‘anticompetitive’ in the antitrust sense . . . because they do not involve restraints on

1 trade or exclusionary conduct in ‘the area of effective competition.’” *Qualcomm*, 969
2 F.3d at 992–93 (quoting *Ohio v. Am. Express Co.*, 585 U.S. 529, 543 (2018)).

3 To sufficiently allege harm to competition, Netgear must allege facts that
4 plausibly suggest that IEEE would have adopted a different standard absent Huawei’s
5 alleged deception. *Rambus*, 522 F.3d at 463 (assuming without deciding that “if
6 Rambus’s more complete disclosure would have caused JEDEC [the SSO] to adopt
7 a different (open, non-proprietary) standard, then its failure to disclose harmed
8 competition”); see also *ChriMar Sys., Inc. v. Cisco Sys., Inc.*, 72 F. Supp. 3d 1012,
9 1018 (N.D. Cal. 2014) (requiring counterclaim defendants “to clearly allege that the
10 IEEE would have adopted an alternative standard” absent the alleged deception);
11 *Townshend v. Rockwell Int’l Corp.*, No. 99-cv-400, 2000 WL 433505, at *13 (N.D.
12 Cal. Mar. 28, 2000) (“In the absence of allegations of market share in the technology
13 market or allegations that the industry standard prevents the development of
14 proprietary technology that could otherwise be developed, Conexant has not alleged
15 that the alleged incorporation of Townshend’s patents into the V.90 standard presents
16 a dangerous probability of monopolization in the market for proprietary
17 technology.”). Netgear alleges no such facts for *any*, much less *all*, of the Wi-Fi
18 technologies at issue. Instead, it pleads the bare conclusion that the “IEEE would
19 have standardized an alternative technology or left the function out of the standard,”
20 without identifying any plausible alternative technologies. Compl. ¶¶ 105, 273.

21 Netgear may attempt to rely on the Third Circuit’s decision in *Broadcom Corp.*
22 *v. Qualcomm Inc.*, 501 F.3d 297 (3d Cir. 2007), to suggest that antitrust injury can
23 lie even when the SSO would not have adopted a different standard. This tack fails.

24 In *Broadcom*, the Third Circuit held that “(1) in a consensus-oriented private
25 standard-setting environment, (2) a patent holder’s intentionally false promise to
26 license essential proprietary technology on FRAND terms, (3) coupled with an
27 SDO’s [a standard-setting organization’s] reliance on that promise when including
28 the technology in a standard, and (4) the patent holder’s subsequent breach of that

1 promise, is actionable anticompetitive conduct.” *Id.* at 314. The Ninth Circuit has
2 never endorsed this holding. Rather, in its sole citation to *Broadcom*, the Ninth
3 Circuit distinguished it on its facts and thus did not address whether it articulates a
4 viable theory of anticompetitive conduct. *Qualcomm*, 969 F.3d at 996–97. If
5 anything, *Qualcomm* indicates it does not: in the context of an alleged FRAND
6 breach, the Ninth Circuit warned against “using the antitrust laws to remedy what are
7 essentially contractual disputes,” *id.* at 997—exactly as Netgear attempts to do here.

8 The provenance of *Broadcom* is itself doubtful. *Broadcom* relied heavily on
9 what it called a “landmark, 120-page opinion in *In the Matter of Rambus, Inc.*” 501
10 F.3d at 311. But that “landmark” decision was reversed subsequent to the *Broadcom*
11 opinion—by the very D.C. Circuit decision discussed above, *Rambus*, 522 F.3d at
12 464. The D.C. Circuit expressly rejected *Broadcom* as “conflict[ing] with *NYNEX*”
13 to the extent it holds that there is an antitrust violation resulting from fraud on an
14 SSO alone, “without an effect on competitive structure.” *Id.* at 466. Consistent with
15 *NYNEX*, *Rambus*, and the Ninth Circuit’s warning against relying on antitrust law to
16 resolve what are fundamentally private contractual disputes, this Court should find
17 Netgear has failed to plead any antitrust injury.

18 **B. Netgear fails to state a claim for attempted monopolization.**

19 “[T]o demonstrate attempted monopolization a plaintiff must prove (1) that
20 the defendant has engaged in predatory or anticompetitive conduct with (2) a specific
21 intent to monopolize and (3) a dangerous probability of achieving monopoly power.”
22 *Cascade Health Sols. v. PeaceHealth*, 515 F.3d 883, 893 (9th Cir. 2008) (citation
23 omitted). Netgear’s attempted monopolization claim—apparently pleaded in the
24 alternative—fails for the same reasons as its monopolization claim.

25 Again, having failed to define the “Relevant Wi-Fi Market” and the nature of
26 each technology comprising that market before their adoption into an IEEE standard,
27 Netgear does not claim that Huawei has a “dangerous probability of achieving
28 monopoly power.” *Id.*; See *Rick-Mik Enters., Inc. v. Equilon Enters., LLC*, 532 F.3d

1 963, 972–73 (9th Cir. 2008). Netgear does not provide any allegations about
2 Huawei’s market share before the incorporation of Huawei’s technology in the
3 relevant standards. Accordingly, Netgear’s allegations are insufficient. *See id.* at 973
4 (affirming dismissal of attempted monopolization claim because “Rick-Mik’s
5 conclusory allegation that Equilon’s intellectual property rights nonetheless do
6 confer market power, unaccompanied by supporting facts, is insufficient.”).

7 Likewise, because Netgear’s allegations fail to allege a cognizable violation of
8 the Sherman Act for monopolization, the same allegations cannot support an
9 attempted monopolization. *LiveUniverse, Inc. v. MySpace, Inc.*, 304 F. App’x 554,
10 557 (9th Cir. 2008) (noting that attempted monopolization requires “pleading the[]
11 same elements” of “anticompetitive conduct and antitrust injury” as a
12 monopolization claim and dismissing both claims).

13 Netgear’s attempted monopolization claim also fails for an independent
14 reason: Netgear does not sufficiently plead “specific intent.” Netgear pleads only the
15 factually unsupported legal conclusion that Huawei acted with “specific intent to
16 acquire and maintain market power.” Compl. ¶ 300. But, as explained above in
17 § IV.A.1, Netgear pleads no proof of market power. Accordingly, any pleaded
18 “conduct to support an inference of specific intent to monopolize should be of a kind
19 clearly threatening to competition or clearly exclusionary.” *Mesirow v. Pepperidge*
20 *Farm, Inc.*, 703 F.2d 339, 345 (9th Cir. 1983). Netgear does not plead any facts
21 supporting such conduct and this claim cannot stand.

22 **C. Netgear fails to state a claim under the civil RICO statute.**

23 Civil RICO is intended to address criminal enterprises, not breaches of
24 contract. It requires plaintiffs to prove that they have standing and allege “(1) conduct
25 (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as
26 ‘predicate acts’) (5) causing injury to plaintiff’s business or property.” *Malley v. San*
27 *Jose Midtown Dev. LLC*, No. 22-15190, 2023 WL 2240805, at *1 (9th Cir. Feb. 27,
28 2023) (citation omitted). Netgear’s Complaint does not meet this standard.

1 I. *Netgear fails to plead any RICO predicate acts.*

2 Courts in this Circuit have consistently rejected attempts to repackage a mere
3 breach of contract as a RICO predicate, which is precisely what Netgear tries here.
4 *See, e.g., Castorina v. Bank of Am., N.A.*, No. 21-cv-2004, 2022 WL 1444364, at *7
5 (E.D. Cal. May 6, 2022) (granting motion to dismiss civil RICO claim because it was
6 based on the same “alleged conduct upon which plaintiff’s breach of contract claim
7 [was] premised,” stating that “[a] plaintiff cannot state a claim under the Civil RICO
8 statute by simply artfully pleading what is essentially a breach of contract claim”
9 (citation omitted)); *Royce Int’l Broad. Corp. v. Field*, No. 99-cv-4169, 2000 WL
10 236434, at *4 (N.D. Cal. Feb. 23, 2000) (granting motion to dismiss RICO claim
11 predicated on breach of contract and single instance of purported fraud, stating “[t]he
12 facts alleged in this contractual dispute are not the types of activities that RICO was
13 intended to eliminate. Any other interpretation would indefinitely expand the reach
14 of the RICO statute by permitting all allegations of ‘broken promises’ in failed
15 business transactions to constitute ‘racketeering activity’” (citation omitted)).
16 Netgear fails to adequately plead RICO predicates.

17 First, nearly all of Netgear’s alleged predicate acts are simply breach of
18 contract allegations that it attempts to dress up as “mail and/or wire fraud.” *See*
19 *Compl.* ¶¶ 159–254. The alleged predicate acts each assert that (1) Huawei made
20 commitments to SSOs to license on RAND terms, (2) other companies created
21 products relying on the resulting standards, and (3) Huawei later did not negotiate
22 RAND licenses. *See id.* These are alleged breaches of contract, not RICO predicates.

23 Netgear tries to transform these purported breaches of contract into “mail
24 and/or wire fraud” by claiming that Huawei never intended to abide by its RAND
25 commitments. *See, e.g., Compl.* ¶¶ 102, 314, 366. But Netgear fails to adequately
26 plead that these commitments were fraudulent: Netgear states only that “[o]n
27 information and belief, Huawei had no intention of licensing its alleged SEPs on
28 RAND terms,” without explaining the basis for this “belief.” *Compl.* ¶ 102. An

1 allegation that a promise was false, absent facts supporting that belief beyond merely
2 subsequent breach, fails to state a claim for fraud. *See, e.g., Audigier Brand Mgmt. v.*
3 *Perez*, No. 2:12-cv-5687 CAS (RZx), 2012 WL 5470888, at *5 (C.D. Cal. Nov. 5,
4 2012) (“[P]laintiff’s allegations of false promises are insufficiently particular to
5 satisfy Rule 9(b), because plaintiff offers no underlying facts on which its beliefs are
6 founded—other than allegations relating to defendant’s post-agreement conduct.”).

7 These supporting facts are a fundamental requirement: otherwise, every breach
8 of contract claim could turn into a claim of fraud “so long as the plaintiff adds to his
9 complaint a general allegation that the defendant never intended to keep [its]
10 promise.” *Id.* at *5 (citation omitted); *see also Laundry L.A., Inc., v. Ace Prop. &*
11 *Cas. Ins. Co.*, No. 2:22-cv-301-SB (ASx), 2022 WL 2155977, at *3 (C.D. Cal. Feb.
12 15, 2022) (“Plaintiff’s conclusory allegations of a lack of intent to perform combined
13 with nonperformance are insufficient to allege a claim for promissory fraud.”);
14 *Perkowski v. Belvill*, No. 8:19-cv-2295-JVS (ADSx), 2020 WL 3891674, at *3 (C.D.
15 Cal. Mar. 2, 2020) (dismissing fraud claim because “[m]ere nonperformance of a
16 promise does not suffice to show the falsity of the promise” (citation omitted));
17 *Richardson v. Reliance Nat’l Indem. Co.*, No. 99-cv-2952, 2000 WL 284211, at *5
18 (N.D. Cal. Mar. 9, 2000) (similar).

19 Second, Netgear’s only alleged predicate acts that are *not* simply business
20 relationships that ended poorly are allegations of trade secret theft lifted from other
21 pleadings that Netgear fails to connect to its other allegations. These likewise cannot
22 support a RICO claim, both because they do not constitute part of a continuous
23 pattern of predicate activity, *see infra* § IV.C.3, and because they do not belong in
24 Netgear’s Complaint in the first instance, *see Mot. to Strike*, ECF No. 77.

25 2. *Netgear fails to plead RICO standing.*

26 Netgear fails to allege that it has suffered any cognizable injury proximately
27 caused by a RICO predicate act as needed to establish RICO standing. *See Reznor v.*
28 *Bayerische Hypo-Und Vereinsbank AG*, 630 F.3d 866, 873 (9th Cir. 2010) (RICO

1 standing requires both but-for and proximate cause). In the RICO context, proximate
2 cause is a demanding standard and is not met when the injury is multiple steps
3 removed from the predicate act. *See Hemi Grp. v. City of N.Y.*, 559 U.S. 1, 2, 5–7, 9–
4 10 (2010) (plurality op.) (harm not proximate where city sought to recover lost tax
5 revenue from business that fraudulently failed to file customer lists, thereby
6 preventing the city from collecting taxes). Even when a plaintiff is injured by a
7 defendant, courts find that this requirement is not met when the injury is caused by
8 actions distinct from the alleged RICO violation. *See Anza v. Ideal Steel Supply*
9 *Corp.*, 547 U.S. 451, 458–61 (2006) (proximate cause not satisfied where, although
10 plaintiff “suffered its own harms,” the harms were caused by acts distinct from the
11 RICO violation).

12 Netgear attempts to plead three injuries: (1) that it “incurred significant fees
13 and costs in investigating and defending against Huawei’s unlawful non-RAND
14 demands,” described as “fees and costs with respect to investigating and defending
15 Huawei’s actions in Germany, the Unified Patent Court, and China,” (2) that it
16 experienced business disruptions, described as “lost sales during the time it was
17 [REDACTED] due to Huawei’s unlawful
18 injunction demand,” and (3) that it is harmed “to the extent that the costs of any
19 license or other fees and expenses exceed the value of a RAND license.” Compl.
20 ¶¶ 322–23. None supports RICO standing.

21 Netgear’s first two alleged injuries are not proximately caused by an alleged
22 RICO predicate. Notably, the Ninth Circuit has never “recognized the incurment of
23 legal fees as a cognizable injury under RICO.” *Limcaco v. Wynn*, No. 21-56285, 2023
24 WL 154965, at *2 (9th Cir. Jan. 11, 2023); *Ogden v. Wells Fargo Bank, N.A.*, No.
25 2:14-cv-3579-DMG (SH), 2015 WL 13413390, at *2 (C.D. Cal. Feb. 20, 2015)
26 (holding that “legal fees are not a valid injury under RICO” (cleaned up)). But even
27 courts that contemplate the possibility that legal fees could demonstrate RICO injury
28 require those fees to have been proximately caused by a RICO violation. *See Cobb*

1 v. *Adams*, No. 13-cv-4917, 2014 WL 2212162, at *9 (N.D. Cal. May 28, 2014)
2 (holding party alleged no RICO injury because “even if incurring legal fees could be
3 sufficient to state RICO injury,” the plaintiff had “not alleged facts showing that a
4 predicate act caused him to incur those fees”). Any fees incurred by Netgear to defend
5 against Huawei’s lawfully-sought injunction are not proximately caused by Huawei’s
6 purportedly fraudulent representations to IEEE. Rather, Netgear’s alleged injuries
7 from paying legal fees were caused, if at all, by Huawei’s decision to file lawsuits to
8 protect Huawei’s patent rights—and filing a lawsuit is not a predicate act. *See*
9 *Holloway v. Clackamas River Water*, No. 3:13-cv-1787, 2014 WL 6998084, at *7–8
10 (D. Or. Dec. 9, 2014) (dismissing RICO claim because “Plaintiff failed to allege
11 proximate cause as the filing of sham lawsuits is not racketeering activity under
12 RICO”); *Tauler Smith, LLP v. Valerio*, No. 2:20-cv-458-AB (ASx), 2020 WL
13 1921789, at *4 (C.D. Cal. Mar. 6, 2020) (stating lawsuits are not predicate acts and
14 dismissing RICO claim). And Netgear’s claim that it “lost sales” because it allegedly
15 [REDACTED] during pending litigation is yet an
16 **additional** step removed from any alleged RICO predicate—and also ignores other
17 market factors contributing to Netgear’s diminished sales. *See* Compl. ¶ 135; *Anza*,
18 547 U.S. at 459 (finding “discontinuity” between predicate act and lost sales because
19 “[b]usinesses lose and gain customers for many reasons” and apportioning losses to
20 the predicate act would be complex).

21 These injuries also fail because civil RICO “does not allow recovery for
22 foreign injuries” (such as those Netgear alleges from lost sales and its fees in foreign
23 litigation). *RJR Nabisco, Inc. v. European Cmty.*, 579 U.S. 325, 354 (2016).
24 Additionally, Netgear cannot base its RICO injury on paying legal fees or for losing
25 sales while defending lawsuits; Huawei is entitled to petition the governments, via
26 their court systems, for redress. *See infra* § IV.F.

27 Netgear’s third alleged injury—licensing costs and fees in excess of a RAND
28 license—has not yet occurred because Netgear has not yet taken any license from

1 Huawei. This injury is thus both wholly speculative (which Netgear itself
2 acknowledges with its “to the extent” caveat when describing a hypothetical supra-
3 RAND license) and non-cognizable. *See Thomas v. Baca*, 308 F. App’x 87, 88 (9th
4 Cir. 2009) (“The injury to business or property must be a ‘concrete financial loss, and
5 not mere injury to a valuable intangible property interest.’” (citation omitted));
6 *Limcaco v. Wynn*, No. 2:20-cv-11372-RSWL (MAAx), 2021 WL 5040368, at *17
7 (C.D. Cal. Oct. 29, 2021) (dismissing RICO claim and stating, “[i]njury to business
8 or property requires tangible and concrete financial loss, rather than speculative or
9 uncertain harm.” (citation omitted)), *aff’d*, 2023 WL 154965 (9th Cir. Jan. 11, 2023).

10 3. *Netgear fails to adequately allege a pattern of predicate acts.*

11 A civil RICO plaintiff must plead a “pattern of racketeering activity,” with
12 each act known as a “predicate act.” *Aversano v. Greenberg Traurig, LLP*, 753 F.
13 Supp. 2d 1063, 1066 (C.D. Cal. 2010). These acts must be both “related” and
14 “continuous.” *Id.* “If the predicate acts are isolated or sporadic incidents, they do not
15 amount to a ‘pattern of racketeering activity.’” *Id.* (citation omitted). Netgear has not
16 pleaded any such pattern of related and continuous predicate acts.

17 Netgear’s alleged predicate acts parrot disputed allegations made in third-party
18 lawsuits with no indication that Netgear independently evaluated the allegations. The
19 Court should disregard these allegations. *See Mot. to Strike*, ECF Nos. 76–77.

20 Even if Netgear could rely on other lawsuits as the basis for its alleged
21 predicate acts, courts dismiss civil RICO actions when—as here—the alleged
22 predicate acts are not sufficiently related. *See, e.g., Mexicanos v. Hewlett-Packard*
23 *Co.*, No. 14-cv-5292, 2015 WL 9592606, at *9–11 (N.D. Cal. July 13, 2015)
24 (uncoordinated predicate acts not sufficiently related when they occurred in three
25 different countries, years apart); *Howard v. Am. Online, Inc.*, 208 F.3d 741, 749 (9th
26 Cir. 2000) (affirming dismissal of RICO claim for failure to allege pattern of
27 racketeering where only the alleged participants in the predicate acts were the same
28 and “[t]he purpose, result, victim and method of [certain predicate acts were]

1 strikingly different from [the others]”).

2 Here, Netgear has alleged nothing more than that Huawei (1) broke a series of
3 unrelated promises involving technology in areas other than Wi-Fi 6, and
4 (2) purportedly engaged in separate trade secret theft. The alleged breaches of SSO
5 commitments are unrelated to one another: they allegedly occurred in different
6 countries—ITU-T is based in Switzerland and ETSI is based in France—in different
7 years, and involved different companies, different SSOs, and different technology
8 (none involving Wi-Fi 6). *See* Compl. ¶ 314. And Huawei’s alleged theft of trade
9 secrets is wholly unrelated to any purported breaches of RAND. *See* Compl. ¶¶ 258,
10 317. Netgear has not pleaded a pattern of predicate acts.

11 4. *Netgear fails to plausibly allege a RICO enterprise.*

12 Netgear has not sufficiently alleged a RICO enterprise because it alleges an
13 enterprise consisting solely of Huawei and its affiliates without pleading any distinct
14 roles these entities played in the alleged predicate acts. To establish RICO liability
15 under § 1962(c), a plaintiff must allege “(1) a ‘person’; and (2) an ‘enterprise’ that is
16 not simply the same ‘person’ referred to by a different name.” *Living Designs, Inc.*
17 *v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir.2005) (citation
18 omitted). “[A] single individual or entity cannot be both the RICO enterprise and an
19 individual RICO defendant.” *River City Markets, Inc. v. Fleming Foods W., Inc.*, 960
20 F.2d 1458, 1461 (9th Cir. 1992). Netgear thus must plead a “person” and an
21 “enterprise” that are distinct from one another; and it has not alleged that Huawei and
22 its corporate subsidiaries are sufficiently so distinct.

23 While courts within the Ninth Circuit have reached different conclusions as to
24 whether corporate family members are sufficiently “distinct” to support a RICO
25 enterprise, even those that allow that possibility require pleading “something more”
26 beyond separate corporate personhood to satisfy the distinctiveness requirement.
27 *Compare, e.g., IQVIA Inc. v. MedImpact Healthcare Sys., Inc.*, No. 21-cv-2081, 2022
28 WL 6258369, at *11 (S.D. Cal. Oct. 7, 2022) (“A plaintiff cannot meet RICO’s

1 distinctness requirement by alleging that a RICO enterprise is comprised of entities
2 within a corporate family and that those individual corporate entities are the RICO
3 persons.” (citation omitted)), and *Ice Cream Distribs. of Evansville, LLC v. Dreyer’s*
4 *Grand Ice Cream, Inc.*, No. 09-cv-5815, 2010 WL 3619884, at *5 (N.D. Cal. Sept.
5 10, 2010) (dismissing a § 1962(c) claim because it “could not be based on a RICO
6 enterprise comprised of a corporation, a wholly-owned subsidiary and an employee
7 of that corporate family if these entities were also plead as the RICO persons”), with
8 *In re Countrywide Fin. Corp. Mortg. Mktg. & Sales Pracs. Litig.*, 601 F. Supp. 2d
9 1201, 1214 (S.D. Cal. 2009) (finding allegations satisfied distinctiveness where
10 plaintiff pleaded distinct roles played by corporation and its subsidiaries).

11 Even if corporate affiliates could theoretically satisfy the distinctiveness test,
12 Netgear has not pleaded any specific roles played by Huawei and its affiliates with
13 respect to any predicate act as needed to add “something more” than their mere
14 corporate separation. *See* Compl. ¶¶ 138–264. Instead, Netgear consistently alleges
15 breaches of contract (purported “mail and/or wire fraud”) involving third parties’
16 reliance on Huawei’s SSO commitments, then adds this conclusory allegation:

17 On information and belief, Huawei and the Huawei Enterprise used
18 mail and/or wire in interstate and foreign commerce to further the
19 scheme to defraud [third-party] and to extract non-RAND rates with the
20 purpose of injuring [third-party] in violation of United States laws,
including 18 U.S.C. §§ 1341 and 1343.

21 Compl. ¶¶ 186 (ADVA), 213 (Verizon), 231 (Harris/L3Harris), 253 (T-Mobile); *see*
22 *also id.* at ¶ 254 (unspecified “other companies”). This fails to identify *any* role by
23 any Huawei affiliate and therefore fails to provide the necessary distinctiveness (in
24 addition to failing to satisfy Rule 9(b) due to its reliance on “information and belief”
25 without any supporting facts regarding the purported participation of an “enterprise”
26 or the use of “mail and/or wire,” *see infra* § IV.D).

27 5. *Netgear fails to state a RICO conspiracy claim.*

28 “Because [Netgear] has failed to state a viable claim for a RICO violation

1 under § 1962(c), [its] conspiracy claim also fails.” *Bondit*, 2020 WL 7777992, at *9.

2 **D. Netgear fails to plead its claims with particularity.**

3 Netgear bases its fraud, negligent misrepresentation, and promissory estoppel
4 claims (as well as its antitrust and RICO claims) on the same purported
5 misrepresentations by Huawei to IEEE but fails to do so with particularity—dooming
6 each of these claims. “Rule 9(b) states that an allegation of ‘fraud or mistake must
7 state with particularity the circumstances constituting fraud.’” *Tatung Co. v. Shu Tze*
8 *Hsu*, 43 F. Supp. 3d 1036, 1060 (C.D. Cal. 2014) (citation omitted) (dismissing
9 insufficiently pleaded RICO claim); see *Vidor v. Am. Int’l Grp., Inc.*, 491 F. App’x.
10 828, 829 (9th Cir. 2012) (affirming dismissal of claims for fraud, negligent
11 misrepresentation, and promissory estoppel not pleaded with particularity under Rule
12 9(b)). “The ‘circumstances’ required by Rule 9(b) are the ‘who, what, when, where,
13 and how’ of the fraudulent activity.” *Tatung*, 43 F. Supp. 3d at 1060 (citations
14 omitted). “In addition, the allegation ‘must set forth what is false or misleading about
15 a statement, and why it is false.’” *Id.*; see also *Seva v. Shri Shirdi Shaibaba Sansthan*
16 *L.A.*, No. 2:12-cv-7455-CAS (Ex), 2013 WL 1431673, at *4 (C.D. Cal. Apr. 9, 2013)
17 (dismissing mail and wire fraud allegations where plaintiffs did not “plead facts about
18 where, when, who and how the alleged representations were made”).

19 Netgear’s Complaint bases its allegations solely on “information and belief”
20 **112 different times**. See Appendix A. That does not meet Rule 9(b)’s standard
21 because Netgear fails to provide the factual basis for these beliefs. See *Tatung*, 43 F.
22 Supp. 3d at 1062 (finding allegations “based on ‘information and belief,’ without
23 providing ‘the factual basis for the belief,’” insufficient (citation omitted)).

24 Netgear also fails to provide the “who, what, when, where, and how” of
25 Huawei’s alleged fraud. *Tatung*, 43 F. Supp. 3d at 1060 (citations omitted).

26 First, Netgear fails to identify for which patents Huawei’s allegedly false
27 RAND declarations were made and when, and therefore fails to plead the fraud
28 purportedly underlying its antitrust claim with sufficient particularity. See *Apple Inc.*

1 v. *Samsung Elecs. Co.*, No. 11–cv–01846, 2011 WL 4948567, at *4 (N.D. Cal. Oct.
2 18, 2011) (dismissing claim that defendant “misrepresented its intent to license its
3 declared essential patents on FRAND terms” because plaintiff did not allege “for
4 *which patents* these FRAND declarations were made”). The timing of specific
5 declarations matters: Netgear relies on Letters of Assurance from as late as 2019, but
6 at least some of the technologies at issue were incorporated into the standard before
7 then. IEEE cannot have relied on assurances that did not yet exist.

8 Second, to the extent Netgear rests its fraud-based claims on allegations that
9 Huawei did not intend to fulfill its RAND commitments at the time it made them,
10 Netgear has failed to adequately plead any fraud occurred. *See* Compl. ¶¶ 102, 314,
11 366. Netgear has not pleaded any facts supporting its purported belief that Huawei’s
12 commitments were false at the time it made them, but rather premises that assertion
13 on Huawei’s alleged breach. This does not suffice under Rule 9(b). *Supra*, § IV.C.1.

14 Third, for its RICO predicate acts based on mail and wire fraud relating to
15 other companies, Netgear fails to allege whether Huawei, Huawei USA, Huawei
16 Device USA, or Futurewei committed the acts, who within those entities committed
17 the acts, whether the fraud involved mail or wire, or how the information furthered
18 the alleged scheme. *See* Compl. ¶¶ 138–264. Netgear also frequently fails to allege
19 the dates when the mail or wire fraud occurred or what information was
20 communicated. It is not enough for Netgear to allege that “[o]n information and
21 belief, Huawei and the Huawei Enterprise used mail and/or wire in interstate and
22 foreign commerce to further the scheme to defraud,” *e.g.*, Compl. ¶ 186, because
23 “Rule 9(b) requires that a plaintiff allege the time, place, and manner of each
24 predicate act, the nature of the scheme involved, and the role of each defendant in the
25 scheme.” *Hill v. Opus Corp.*, 841 F. Supp. 2d 1070, 1088–89 (C.D. Cal. 2011)
26 (stating that in RICO cases courts have “required specific allegations as to which
27 defendant caused what to be mailed (or made which telephone calls), and when and
28 how each mailing (or telephone call) furthered the fraudulent scheme” (citation

1 omitted)); *Chung Goh v. Prima Fin. Grp., Inc.*, No. 2:17-cv-3630-SVW (PJW), 2017
2 WL 7887860, at *3 (C.D. Cal. July 26, 2017) (dismissing RICO claim where
3 allegations were made based on information and belief and plaintiff failed to allege
4 mail or wire fraud with specificity).

5 Fourth, Netgear fails to plead its RICO conspiracy claim with particularity.
6 “[W]here the predicate acts sound in fraud, the plaintiff must plead the conspiracy
7 with the particularity required by Rule 9(b),” including alleging with particularity “an
8 agreement to participate in an unlawful act.” *Id.* Netgear alleges that the “nature of
9 the acts and material misrepresentations in furtherance of the conspiracy indicates
10 that Huawei, Huawei USA, Huawei Device USA, and Futurewei” agreed to conspire.
11 Compl. ¶ 329. But Netgear again fails to allege “how, why, when, or where” Huawei
12 and, more importantly, any of its affiliates “agreed to participate in any RICO
13 enterprise.” And it fails to identify how any Huawei affiliate participated in any
14 predicate act. *Chung Goh*, 2017 WL 7887860, at *3; *see* Compl. ¶¶ 138–264.

15 Netgear’s antitrust, RICO, fraud, negligent misrepresentation, and promissory
16 estoppel claims should be dismissed for failure to satisfy Rule 9(b).

17 **E. Netgear’s UCL claim fails for the same reasons.**

18 Because Netgear’s antitrust, RICO, and fraud claims fail, its UCL claim
19 premised on Huawei’s purported violation of the antitrust and RICO laws, and on
20 purported fraud, fails for the same reasons (including failure to satisfy Rule 9(b)).

21 **F. *Noerr-Pennington* bars Netgear’s antitrust and RICO claims based**
22 **on Huawei’s patent infringement litigation against Netgear.**

23 To support its contention that Huawei failed to license its Wi-Fi patents at
24 FRAND rates, Netgear relies heavily on Huawei’s litigation activity. *See generally*,
25 *e.g.*, Compl. ¶¶ 101–37. But under the *Noerr-Pennington* doctrine, that activity
26 cannot form the basis of antitrust or RICO liability.

27 The law is clear that “those who petition any department of the government
28 for redress are generally immune from statutory liability for their petitioning

1 conduct.” *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 929 (9th Cir. 2006) (applying *Noerr-*
2 *Pennington* immunity and affirming dismissal of RICO claims); *Filmtec Corp. v.*
3 *Hydranautics*, 67 F.3d 931, 937 (Fed. Cir. 1995) (holding that an amendment to assert
4 an antitrust counterclaim would be “futile” because “an effort to influence the
5 exercise of government power, even for the purpose of gaining an anticompetitive
6 advantage, does not create liability under the antitrust laws”). That includes litigation
7 and all communications incident to litigation, such as pre-suit demand letters. *Sosa*,
8 437 F.3d at 933–34 (applying *Noerr-Pennington* to demand letters between parties);
9 *see also Pick v. Kay*, No. 20-55804, 2022 WL 193197, at *1 (9th Cir. Jan. 21, 2022)
10 (affirming dismissal and stating that funding litigation constitutes protected activity);
11 *Glass Equip. Dev., Inc. v. Besten, Inc.*, 174 F.3d 1337, 1343–44 (Fed. Cir. 1999)
12 (holding that *Noerr-Pennington* protected threat of patent enforcement litigation).
13 And *Noerr-Pennington*’s protection is not limited to petitioning activity before U.S.
14 courts. *Coastal States Mktg., Inc. v. Hunt*, 694 F.2d 1358, 1366–67 (5th Cir. 1983)
15 (applying immunity to petitioning activity in Libya); *Luxpro Corp. v. Apple Inc.*, No.
16 10-cv-3058, 2011 WL 1086027, at *4–5 (N.D. Cal. Mar. 24, 2011) (applying
17 immunity to “Apple’s pursuit of . . . injunctions in Germany and Taiwan”).

18 Because Huawei’s litigation and litigation-related activities cannot form the
19 basis of Netgear’s antitrust or RICO claims, the Court should dismiss Netgear’s
20 claims to the extent they rely on those activities. *See* Compl. ¶¶ 118 (referring to
21 German litigation), 119 (relying on litigation in China), 125 ([REDACTED]
22 [REDACTED]), 127 (relying on UPC litigation), 134 (relying on UPC litigation), 137,
23 322–23 (relying on “fees and costs” from “investigating and defending” foreign
24 litigation and lost sales due to Huawei’s injunction demand).

25 V. CONCLUSION

26 This Court should dismiss Netgear’s antitrust, RICO, fraud, negligent
27 misrepresentation, promissory estoppel claims (Counts 1–4, 7–9), and its UCL claim
28 (Count 10) to the extent it relies on antitrust or RICO violations or upon fraud.

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Dated: June 14, 2024

SUSMAN GODFREY L.L.P.

By: */s/ Kalpana Srinivasan*

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Local Rule 7-3 Attestation

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on June 5, 2024.

Dated: June 14, 2024

By: /s/ Kalpana Srinivasan

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Certificate of Compliance

The undersigned, counsel of record for Huawei Technologies Co., Ltd., certifies that this brief is no more than 25 pages in length, which:

complies with the word limit of L.R. 11-6.1.

complies with the page limit set by court order dated March 14, 2024 (ECF No. 41).

Dated: June 14, 2024

By: /s/ Kalpana Srinivasan

Kalpana Srinivasan
SUSMAN GODFREY L.L.P.

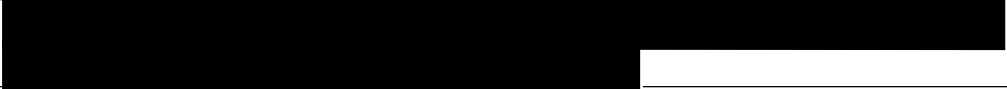
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Appendix A: Allegations Based on “Information and Belief” in Netgear’s Complaint

	Complaint Quote	Complaint Paragraph
1.	“ On information and belief , Huawei provided false Letters of Assurance to IEEE, representing that Huawei would license its SEPs on RAND terms while not intending to honor its representation.”	¶5
2.	“Huawei has acted with others, including at least, on information and belief , Huawei Technologies USA Inc. (‘Huawei USA’) and Huawei Device USA Inc. (‘Huawei Device USA’), manufacturers of communications products headquartered in the United States, and Futurewei Technologies, Inc. (‘Futurewei’), a separate research and development company headquartered in the United States, with offices in California and Texas, that is home to Huawei’s U.S. IPR Department, as part of a ‘Huawei Enterprise.’”	¶10
3.	“ On information and belief , Huawei’s fraudulent, unfair and anti-competitive actions have only intensified since the United States banned Huawei products in the United States, and Huawei’s actions against United States companies are retaliatory.”	¶11
4.	“ On information and belief , Huawei is a Chinese corporation with its principal place of business at Huawei Base, Bantian, Longgang District, Shenzhen 518129, People’s Republic of China. The People’s Republic of China is a signatory to the Hague Service Convention, and Huawei may be served through the Central Authority in that country.”	¶16
5.	“ On information and belief , Huawei is a wholly-owned subsidiary of Huawei Investment & Holding Co., Ltd., which is a Chinese corporation based in the People’s Republic of China.”	¶17
6.	“ On information and belief , Huawei receives significant support from the Chinese government.”	¶18
7.	“ On information and belief , Huawei is part of a multinational enterprise that operates itself and its subsidiaries or affiliates (including Huawei USA, Huawei Device USA and Futurewei).”	¶20
8.	“ On information and belief , Huawei Device USA is a Texas corporation with its principal place of business at 16479 Dallas Parkway, Suite 355, Addison, Texas 75001-3586.”	¶20
9.	“ On information and belief , Huawei USA is a Texas corporation with its principal place of business at 16479 Dallas Parkway, Suite	¶20

	355, Addison, Texas 75001-3586.”	
10.	“ On information and belief , Huawei directly or indirectly controls each of its subsidiaries or affiliates, including Huawei USA, Huawei Device USA and Futurewei, and the Huawei Enterprise.”	¶20
11.	“The ends of justice require the exercise of personal jurisdiction over Huawei because Huawei is engaged in a RICO enterprise as described herein and knew its conduct was intended to cause injury to NETGEAR, a California resident, and, on information and belief , there is no single jurisdiction where Huawei is otherwise subject to personal jurisdiction.”	¶27
12.	“Huawei, along with Futurewei and, on information and belief , Huawei USA, engaged and continues to engage in activities to extort non-RAND rates for its alleged SEPs, racketeering activities, and anti-competitive activities.”	¶31
13.	“Huawei directed those communications to the United States and California and involved, coordinated, supervised and controlled the actions of Futurewei, and on information and belief , Huawei USA, in such patent licensing discussions.”	¶33
14.	“ On information and belief , Huawei has employed and/or contracted with individuals who reside and work within California and this District, operated the Huawei Enterprise in California and this District per the Superseding Indictment, and continues to do so.”	¶34
15.	“ On information and belief , Huawei’s primary revenue-generating activity in the United States is licensing its patents, and Huawei derives substantial revenue from its patent licensing efforts.”	¶36
16.	“These licensing negotiations included personnel from NETGEAR located in California and Huawei, Futurewei and, on information and belief , Huawei USA personnel located in the United States (on information and belief , in Texas and California).”	¶38
17.	“The parties conducted at least three meetings, with NETGEAR personnel participating from California and Futurewei and/or Huawei USA personnel participating from the United States, including personnel located, on information and belief , in California and Texas.”	¶39
18.	“Further, on information and belief , according to the Superseding Indictment issued by the U.S. Department of Justice	¶43

	in the Eastern District of New York criminal proceedings, and as described below, the Huawei Enterprise has operated in this District.”	
19.	“ On information and belief , historically, the IEEE has not included technology in a standard unless it could obtain a LOA.”	¶64
20.	“ On information and belief , Huawei participated in the development and implementation of Wi-Fi industry standards through its membership and participation in IEEE.”	¶72
21.	“ On information and belief , other Huawei, Futurewei, Huawei Device USA, and/or Huawei USA personnel currently participate or have participated in relevant IEEE standard working groups, including Ming Gan, Yunbo Li, Xun Yang, and Edward Au.”	¶72
22.	“ On information and belief , as a result of Huawei’s IPR disclosures, Huawei’s alleged SEP technology was incorporated into the 802.11 standards, and other alternative technologies that might otherwise have been considered for inclusion in the standard were not adopted.”	¶73
23.	“ On information and belief , the Pre-Wi-Fi 6 LOAs were sent to this address in the United States using U.S. Postal Service or private commercial interstate or foreign carrier, or use of electronic means of communication such as fax or the Internet.”	¶75
24.	“ On information and belief , the January 2007 LOA was accepted by the IEEE on January 9, 2007.”	¶77
25.	“ On information and belief , the August 2013 LOA was accepted by the IEEE on August 13, 2013.”	¶80
26.	“ On information and belief , the Wi-Fi 6 LOAs were sent to this address in the United States using U.S. Postal Service or private commercial interstate or foreign carrier, or use of electronic means of communication such as fax or the Internet.”	¶81
27.	“ On information and belief , the May 2019 LOA was accepted by the IEEE on May 30, 2019.”	¶82
28.	“ On information and belief , the July 2019 LOAs were accepted by IEEE on July 25, 2019.”	¶83
29.	“ On information and belief , Huawei had no intention of licensing its alleged SEPs on RAND terms.”	¶102
30.	“ On information and belief , Huawei’s United States Chief Intellectual Property Counsel at the time was located in Texas, and employed by Futurewei and/or Huawei USA.”	¶114
31.	[REDACTED]	¶125

		
32.	“ On information and belief , Huawei’s negotiation tactics of refusing to provide relevant information while at the same time demanding royalty rates in a “take it or leave it” approach was intended to extract supracompetitive rates from NETGEAR under the mounting threat of serial lawsuits filed by Huawei.”	¶128
33.	“ On information and belief , Huawei’s efforts to dominate the world are connected to and supported by the Chinese government’s continued efforts to gain technological supremacy at any cost.”	¶143
34.	“As further detailed below, on information and belief , the Huawei Enterprise operated in several districts of the United States, including the Central District of California, the Northern District of California, the Eastern District of New York, the Northern District of Texas, and the Eastern District of Texas.”	¶147
35.	“ On information and belief , Huawei’s objective during an SSO’s consideration of proposed standards was first to cause those technologies to be standardized with Huawei’s alleged essential technology through the advocacy of Huawei’s representatives for the adoption of the relevant technologies.”	¶150
36.	“Huawei then, on information and belief , made false promises to SSOs to license any SEPs on RAND terms and conditions.”	¶150
37.	“Huawei knowingly provides fraudulent commitments to SSOs that are relied upon by the SSOs and the industry, and commences licensing negotiations with United States companies, and includes Futurewei and, on information and belief , Huawei USA in the negotiations, under the pretense of RAND, but repeatedly fails to provide the critical information to determine whether any rate that Huawei seeks is in fact RAND.”	¶152
38.	“Huawei seeks grossly excessive or supracompetitive licensing rates on a ‘take it or leave it’ and ‘all or nothing’ approach and, on information and belief , under the coercive threat of litigation and injunctions.”	¶153
39.	“ On information and belief , Huawei and the Huawei Enterprise used mail and/or wire in interstate and foreign commerce to further its scheme to defraud victim United States companies and in violation of United States laws, including Title 18, United States Code, Sections 1341 and 1343.”	¶153

40.	“Huawei’s irrevocable promises to IEEE, on information and belief , were not made in good faith but were made with deceptive intent, constitute misrepresentations to the IEEE and the world, constitute a scheme to defraud for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, and constitute mail and wire fraud under the laws of the United States.”	¶160
41.	“ On information and belief , Huawei sent its fraudulent commitments via mail and/or wire to the IEEE in the United States with deceptive intent and knowing that it would use additional mail and/or wire communications to NETGEAR and other companies located in the United States to further its fraudulent scheme and demand and threaten non-RAND terms and conditions to extort non-RAND license fees.”	¶161
42.	“Huawei’s United States Chief Intellectual Property Counsel, on information and belief , located in Texas, has been involved in these demands via email, using a futurewei.com email address and has attended meetings virtually.”	¶166
43.	“Futurewei’s Corporate IP Counsel, on information and belief , located in California, has been involved in these demands via email, using a futurewei.com email address and has attended meetings virtually. Counsel from Futurewei, located in the United States, virtually attended meetings on at least July 25, 2022, and May 4, 2023.”	¶166
44.	“ On information and belief , counsel attended from the United States including California and Texas.”	¶166
45.	“ On information and belief , ADVA NA is a Delaware corporation with its principal place of business at 5755 Peachtree Industrial Boulevard, Norcross, Georgia 30092-3502, and has offices at 2301 Greenville Avenue, Richardson, Texas 75082.”	¶172
46.	“ On information and belief , ADVA SE is a Societas Europaea organized under the laws of the European Union, with a principal place of business located at Fraunhoferstraße 9a, 82152 Martinsried/Munich, Germany, and ADVA NA is a subsidiary of ADVA SE.”	¶173
47.	“ On information and belief , ADVA SE is majority owned and controlled by Adtran Holdings, Inc., a Delaware corporation with its principal place of business at 901 Explorer Boulevard, Huntsville, Alabama 35806-2807.”	¶173

48.	“ On information and belief , ADVA is ‘a leading provider of network equipment for data, storage, voice and video services’ and brought the lawsuit ‘in part, based on Huawei’s failure to offer a license to its alleged standard essential patents (‘SEPs’) on fair, reasonable, and non-discriminatory (‘FRAND’) terms and conditions in breach of contractual obligations Huawei made through participation in the Telecommunication Standardization Sector of the International Telecommunication Union (‘ITU-T’).”	¶174
49.	“ On information and belief , Huawei and the Huawei Enterprise used mail and/or wire in interstate and foreign commerce to further the scheme to defraud ADVA and to extract non-RAND rates with the purpose of injuring ADVA in violation of United States laws, including 18 U.S.C. §§ 1341 and 1343.”	¶186
50.	“ On information and belief , Huawei and the Huawei Enterprise acted knowingly that the use of mail and/or wire in interstate and foreign commerce in furtherance of the scheme to defraud would follow in the ordinary course of business and could be reasonably foreseen.”	¶186
51.	“ On information and belief , Verizon Communications, Inc. is a Delaware corporation with its principal place of business at 1095 Avenue of the Americas, New York, NY 10036.”	¶188
52.	“ On information and belief , Verizon Business Network Services, Inc. is a Delaware corporation with its principal place of business at 22001 Loudoun County Parkway, Ashburn, Virginia 20147.”	¶189
53.	“ On information and belief , Verizon Enterprise Solutions LLC was a Delaware limited liability company with its principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920.”	¶190
54.	“ On information and belief , Cellco Partnership d/b/a Verizon Wireless, Inc. is a General Partnership with its principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920.”	¶191
55.	“ On information and belief , Verizon Data Services LLC is a Delaware limited liability company with its principal place of business at One East Telecom Parkway, B3E, Temple Terrace, Florida 33637.”	¶192
56.	“ On information and belief , Verizon Business Global, LLC is a Delaware corporation with its principal place of business at One Verizon Way, Basking Ridge, New Jersey.”	¶193

57.	<p>“On information and belief, Verizon Services Corp. is a Delaware corporation with its principal place of business at 1717 Arch Street, 21st Floor, Philadelphia, PA 19103.”</p>	¶194
58.	<p>“On information and belief, Verizon Patent and Licensing Inc. is a Delaware corporation with its principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920.”</p>	¶195
59.	<p>“Huawei’s first amended complaint claims an alleged “RAND Commitment” to the ITU-T (see paragraphs 40-46) that, on information and belief, was falsely made, and several subsequent communications that, on information and belief, occurred via wire and/or mail with Verizon in the United States in furtherance of its scheme to defraud and extract supracompetitive rates and non-RAND terms, as described further herein: . . .”</p>	¶197
60.	<p>“On information and belief, these communications occurred via wire and/or mail with Verizon in the United States and included representatives from Futurewei and/or Huawei USA.”</p>	¶198
61.	<p>“Huawei’s first amended complaint also provides details of in-person meetings in 2019 and 2020, confirming several meetings took place between Verizon and Huawei representatives from China in New York, which, on information and belief, included representatives from Futurewei and/or Huawei USA.”</p>	¶199
62.	<p>“Verizon further alleged Huawei’s intention to gain and misuse ‘hold up’ power to extract exorbitant royalties: Huawei and its representatives to the ITU-T failed to inform the ITU-T that Huawei would not meet its FRAND commitments and, on information and belief, such failure was intentional and made with deceptive intent in order to induce the ITU-T to include in the relevant standards technologies that Huawei claims are covered by Huawei’s asserted patents.”</p>	¶211
63.	<p>“On information and belief, Huawei and the Huawei Enterprise used mail and/or wire in interstate and foreign commerce to further the scheme to defraud Verizon and to extract non-RAND rates with the purpose of injuring Verizon in violation of United States laws, including 18 U.S.C. §§ 1341 and 1343.”</p>	¶213
64.	<p>“On information and belief, Huawei and the Huawei Enterprise acted knowingly that the use of mail and/or wire in interstate and foreign commerce in furtherance of the scheme to defraud would follow in the ordinary course of business and could be reasonably foreseen.”</p>	¶213

65.	“ On information and belief , Harris Corporation was a Delaware corporation duly organized and existing under the laws of the state of Delaware, with its principal place of business at 1025 West NASA Boulevard, Melbourne, Florida.”	¶215
66.	“ On information and belief , L3Harris Technologies, Inc. is a Delaware corporation duly organized and existing under the laws of the state of Delaware, with its principal place of business at 1025 West NASA Boulevard, Melbourne, Florida.”	¶215
67.	“ On information and belief , Harris Corporation was an American technology company that produced wireless equipment for use in the government, defense, emergency service, and commercial sectors.”	¶216
68.	“ On information and belief , in 2019, Harris merged with L3 Technologies to form L3Harris Technologies.”	¶216
69.	“ On information and belief , L3Harris Technologies is the sixth largest defense contractor in the world following the merger.”	¶216
70.	“ On information and belief , the December 5, 2018, email was sent by Huawei to Harris and/or L3Harris in the United States and included Futurewei, Huawei Device USA and/or Huawei USA.”	¶218
71.	“Harris’s counterclaim further alleged that ‘[o]n information and belief , Huawei was aware of the impropriety of bringing an action for infringement after a party had expressed willingness to negotiate for a license on FRAND terms, but before offering such a license with specific terms including a royalty rate.’”	¶225
72.	“Harris’s counterclaim alleged that Huawei sent mail and/or wire communications to Harris but did not provide any information about the offered license terms or identification of any alleged essential patents, demonstrating Huawei’s pattern and scheme to defraud Harris and others by intentionally making false commitments to an SSO, and on information and belief , subsequently attempting to extract non-RAND terms under coercive threat of litigation: . . . “	¶227
73.	“ On information and belief , the communications alleged by Harris were received by Harris and/or L3Harris, from Huawei and included Huawei Device USA, Huawei USA and/or Futurewei via wire and/or mail in the United States.”	¶229
74.	“ On information and belief , Huawei and the Huawei Enterprise used mail and/or wire in interstate and foreign commerce to further the scheme to defraud Harris/L3Harris and to extract non-	¶231

	RAND rates with the purpose of injuring Harris/L3Harris in violation of United States laws, including 18 U.S.C. §§ 1341 and 1343.”	
75.	“ On information and belief , Huawei and the Huawei Enterprise acted knowingly that the use of mail and/or wire in interstate and foreign commerce in furtherance of the scheme to defraud would follow in the ordinary course of business and could be reasonably foreseen.”	¶231
76.	“ On information and belief , T-Mobile US, Inc. is a Delaware corporation with its principal place of business at 12920 SE 38th Street, Bellevue, Washington 98006.”	¶233
77.	“ On information and belief , T-Mobile USA, Inc. is a Delaware corporation with its principal place of business at 12920 SE 38th Street, Bellevue, Washington 98006, and is a wholly-owned subsidiary of T-Mobile US, Inc.”	¶233
78.	“ On information and belief , T-Mobile operates cellular wireless networks across the United States, and T-Mobile and/or its authorized retailers operate T-Mobile stores throughout the United States.”	¶234
79.	“ On information and belief , T-Mobile’s 4G wireless networks in the United States are used by customers to place and receive cellular phone calls, in addition to being used to send and receive data services, which are offered by or on behalf of T-Mobile.”	¶234
80.	“Huawei’s complaints did not identify any of its RAND commitments to these SSOs but alleged several communications with T-Mobile regarding patent licensing, which, on information and belief , were via mail and/or wire with T-Mobile in the United States and were bound by Huawei’s RAND commitments and obligations as detailed further herein, including: . . .”	¶236
81.	“T-Mobile’s answers admitted the existence of several communications with Huawei, including by email, which, on information and belief , were via wire and/or mail with T-Mobile in the United States, and included Futurewei, Huawei Device USA and/or Huawei USA: . . .”	¶238
82.	“ On information and belief , Huawei and the Huawei Enterprise used mail and/or wire in interstate and foreign commerce to further the scheme to defraud T-Mobile and to extract non-RAND rates with the purpose of injuring T-Mobile in violation of United States laws, including 18 U.S.C. §§ 1341 and 1343.”	¶253

83.	“ On information and belief , Huawei and the Huawei Enterprise acted knowingly that the use of mail and/or wire in interstate and foreign commerce in furtherance of the scheme to defraud would follow in the ordinary course of business and could be reasonably foreseen.”	¶253
84.	“ On information and belief , since at least 2006, Huawei and the Huawei Enterprise used mail and/or wire in interstate and foreign commerce to further the scheme to defraud additional United States victim companies by making false and material commitments to SSOs to license on RAND terms and conditions and to extract non-RAND rates with the purpose of injuring the companies in violation of United States laws, including 18 U.S.C. §§ 1341 and 1343.”	¶254
85.	“ On information and belief , Huawei and the Huawei Enterprise acted knowingly that the use of mail and/or wire in interstate and foreign commerce in furtherance of the scheme to defraud would follow in the ordinary course of business and could be reasonably foreseen.”	¶254
86.	“ On information and belief , the six United States victim companies of Huawei, Futurewei, Huawei USA, and Huawei Device USA’s scheme to misappropriate intellectual property included: . . .”	¶258
87.	“ On information and belief , Cisco Systems, Inc. is an American digital communications company headquartered in San Jose, California.”	¶258
88.	“ On information and belief , Motorola Solutions is an American telecommunications company headquartered in Chicago, Illinois.”	¶258
89.	“ On information and belief , Quintel Technology Ltd. operates offices in Menlo Park, California.”	¶258
90.	“In July 2004, Fujitsu Network Communications, on information and belief headquartered in Richardson, Texas, claimed a Huawei employee was caught trying to steal information on its products at a recent Chicago trade show.”	¶258
91.	“ On information and belief , CNEX is a privately held start-up company founded in 2013 in Silicon Valley, California.”	¶258
92.	“ On information and belief , Huawei has undertaken an obligation, in accordance with the relevant rules and IPR policies of applicable SSOs, to grant licenses on RAND terms and conditions.”	¶267

93.	“ On information and belief , Huawei is asserting that certain patents that have been asserted against NETGEAR are essential to the IEEE 802.11 standard.”	¶268
94.	“Upon information and belief , Huawei engaged in an unlawful scheme to exploit its undue market power over technologies necessary for implementers, including NETGEAR, to “lock in” and practice certain Wi-Fi standards.”	¶284
95.	“Moreover, Huawei took its anticompetitive abusive licensing practices a step further here by insisting that NETGEAR requires a license to patents covered by or exhausted by a license entered into between Huawei and NETGEAR’s supplier Qualcomm, while at the same time knowing, upon information and belief , that NETGEAR was licensed to Huawei’s patents through the Qualcomm license.”	¶286
96.	“ On information and belief , the Huawei Enterprise has operated and is operating in several Districts in the United States, including the Eastern District of New York, the Central District of California, the District of Columbia, the District of Delaware, the District of New Jersey, the Eastern District of Texas, the Northern District of California, the Northern District of Illinois, the Northern District of Texas, the Southern District of California, the Southern District of New York, the Western District of New York, the Western District of Washington, and elsewhere, including overseas.”	¶310
97.	“ On information and belief , the Huawei Enterprise has targeted dozens of United States companies headquartered or with offices in several states, each engaged in interstate and foreign commerce.”	¶311
98.	“As described in paragraphs 138-254, on information and belief , operating a scheme to defraud by which Huawei participates in SSOs and induces the SSO to include Huawei’s alleged SEPs in the standards by fraudulently and falsely making material commitments to license any SEPs under RAND terms and conditions, further inducing companies headquartered or with offices in the United States and others to incorporate the standardized technology in products for sales worldwide to “lock” them in to the technology, using mail and/or wire in interstate and foreign commerce to demand supracompetitive and exorbitant licensing rates from United States companies in furtherance of the scheme to defraud, and unlawfully seeking non-RAND rates and	¶314

	conditions that Huawei, and the Huawei Enterprise, are legally prohibited from seeking pursuant to RAND obligations.”	
99.	“Huawei and the Huawei Enterprise devised and furthered the schemes to defraud by use of mail, telephone, and Internet, and transmitted or caused to be transmitted, by means of mail and/or wire communications traveling in interstate and foreign commerce, or acted knowing that the use of mail and/or wire in interstate and foreign commerce in furtherance of its scheme to defraud would follow in the ordinary course of business and could be reasonably foreseen, writing(s) and/or signal(s), including as described above, Huawei’s LOAs to the IEEE and similar commitments to SSOs, and the Huawei Enterprise’s communications with NETGEAR, ADVA, Verizon, Harris Corporation/L3Harris and T-Mobile, and on information and belief , other companies headquartered or with offices in the United States.”	¶315
100.	“Huawei’s predatory and coercive negotiation tactics have yet another layer here, as Huawei has demanded supracompetitive illegal costs from NETGEAR while knowing, on information and belief , that NETGEAR was impliedly licensed to Huawei’s patents through Huawei’s license with Qualcomm.”	¶316
101.	“On top of this, Huawei breached its agreement to provide licenses with RAND terms by contending that NETGEAR requires a license to patents covered by or exhausted by a license entered into between Huawei and Qualcomm while knowing, upon information and belief , that NETGEAR was impliedly licensed to Huawei’s patents and Huawei’s patent rights were exhausted through the Qualcomm license.”	¶340
102.	“ On information and belief , Huawei is attempting to exploit the power it gained through its involvement with working groups and the standardization of its patents to demand grossly excessive royalty rates that are wholly disproportionate to the value of any technical contribution of its alleged SEPs.”	¶346
103.	“ On information and belief , there may be other agreements between Huawei and Qualcomm concerning Huawei patents that have not been made available to NETGEAR by Huawei or Qualcomm.”	n.72
104.	“ On information and belief , any claim by Huawei that NETGEAR infringes Huawei patents is barred in whole or in part because NETGEAR purchases chips from Qualcomm that are	¶355

	licensed to NETGEAR under the Qualcomm License.”	
105.	“ On information and belief , any claim by Huawei that NETGEAR infringes Huawei patents is barred in whole or in part because NETGEAR has an implied license to Huawei’s patents as a beneficiary of the terms of the Qualcomm Agreement[.]”	¶356
106.	“ On information and belief , because Qualcomm sells licensed modem chipsets to NETGEAR, any such sale by Qualcomm to NETGEAR exhausts any purported patent rights held by Huawei.”	¶357
107.	“Huawei engaged in further fraudulent activity by asserting that NETGEAR requires a license to patents covered by or exhausted by the Qualcomm License while knowing that, upon information and belief , NETGEAR was impliedly licensed to Huawei’s patents through Qualcomm.”	¶379
108.	“ On information and belief , any claim by Huawei that NETGEAR infringes Huawei patents is barred in whole or in part because NETGEAR purchases modem chipsets from Qualcomm that are impliedly licensed and/or exhausted under the Qualcomm License.”	¶382
109.	“Additionally, Huawei engaged in unfair business practices by asserting that NETGEAR requires a license to patents covered by or exhausted by the Qualcomm License while knowing, upon information and belief , that NETGEAR was licensed to Huawei’s patents through Huawei’s license with Qualcomm.”	¶401