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

18 NETGEAR, INC.,

19 Plaintiff,

20 vs.

21 HUAWEI TECHNOLOGIES CO.,
22 LTD.,

23 Defendant.

Case No. 2:24-cv-824 AB (AJRx)

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF HUAWEI'S
MOTION TO STRIKE**

Date: August 2, 2024

Time: 10:00 am

Place: 30 West First Street
Courtroom 7B

Los Angeles, CA 90012

Jud. Officer: Hon André Birotte Jr.

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1 **I. INTRODUCTION**

2 Sixty of the 404 paragraphs in Netgear’s 113-page Complaint (“Compl.”) are
3 cut-and-paste, bald allegations that Netgear lifts directly from pleadings in other
4 litigations to which Netgear was not a party and that were never even adjudicated.
5 Netgear quotes these non-party allegations wholesale and relies on them to try to
6 provide a basis for alleging a “pattern of racketeering activity” and a “Scheme to
7 Defraud Victim United States Companies in Violation of” the civil RICO statute.
8 Netgear does not plead that it has personal knowledge of the non-party allegations.
9 And Netgear does not claim to have conducted any independent inquiry to verify
10 them. For example:

- 11 • With respect to non-party ADVA Optical Networking: “*ADVA’s complaint*
12 details the history of Huawei’s negotiation tactics starting in 2022, which
13 demonstrates Huawei’s pattern and scheme to defraud ADVA and others by
14 intentionally making false commitments to an SSO [standard-setting
15 organization] and subsequently attempting to extract supracompetitive rates
16 and non-RAND [reasonable and non-discriminatory] terms.” Compl. ¶183.¹
- 17 • With respect to non-party Verizon: “*Verizon’s counterclaims* further
18 demonstrate Huawei’s pattern and scheme to defraud Verizon and others by
19 intentionally making false commitments to an SSO and subsequently
20 attempting to extract supracompetitive rates and non-RAND terms. *Verizon*
21 *alleged* Huawei’s scheme to defraud the ITU-T [an SSO] and implementers,
22 and the material misrepresentations that were relied upon by Verizon,” *Id.*
23 ¶210.
- 24 • With respect to non-party Harris/L3Harris: “*Harris’s counterclaim* further
25 alleged that “[o]n information and belief, Huawei was aware of the impropriety
26 of bringing an action for infringement after a party had expressed willingness
27

28 ¹ All emphases are added unless otherwise specified.

1 to negotiate for a license on FRAND terms, but before offering such a license
2 with specific terms including a royalty rate.’ ” *Id.* ¶225.

- 3 • With respect to non-party T-Mobile: “*T-Mobile’s counterclaims* alleged it was
4 subjected to Huawei’s ‘serial litigation tactics’ and taking the ‘all-or-nothing’
5 approach, further demonstrating Huawei’s pattern and scheme to defraud T-
6 Mobile and others by intentionally making false commitments to an SSO and
7 subsequently attempting to extract non-RAND terms under coercive threat of
8 litigation.” *Id.* ¶248.
- 9 • With respect to non-party the United States’ Third Superseding Indictment:
10 “The *Superseding Indictment* alleges the Huawei Enterprise engaged in a
11 pattern of racketeering activity, as defined in Title 18, United States Code,
12 Sections 1961(1) and 1961(5).” *Id.* ¶260.

13 The Court should strike paragraphs ¶¶174–186, 201–213, 220–231, 239–253,
14 255–262, 264, and 314–317 of Netgear’s Complaint. The allegations are simply lifted
15 from other pleadings in matters where Netgear was not a party, and that Netgear
16 cannot and does not independently verify. Netgear’s allegations are thus “immaterial”
17 as a matter of law under Federal Rule of Civil Procedure 12(f). *See, e.g., Maine State*
18 *Ret. Sys. v. Countrywide Fin. Corp.*, No. 2:10-cv-302, 2011 WL 4389689, at *19–21
19 (C.D. Cal. May 5, 2011) (striking allegations where plaintiffs did not “reasonably
20 investigate[] the allegations they copied from complaints in other cases”); *Attia v.*
21 *Google LLC*, No. 17-cv-6037, 2018 WL 2971049, at *14–16 (N.D. Cal. June 13,
22 2018) (disregarding plaintiffs’ civil RICO “pattern of racketeering” allegations that
23 were based on “six lawsuits filed against Google by other plaintiffs”); *In re Connetics*
24 *Corp. Sec. Litig.*, 542 F. Supp. 2d 996, 1004–06 (N.D. Cal. 2008) (striking allegations
25 that were “lift[ed] . . . from an SEC complaint”).

26 **II. FACTUAL BACKGROUND**

27 At its core, this case relates to a dispute over the appropriate rate that Netgear
28 should pay Huawei to license Huawei’s patents on Wi-Fi 6 technology. Huawei holds

1 a large share of declared standard-essential patents (“SEPs”) on the Wi-Fi 6
2 networking standard promulgated by the Institute of Electrical and Electronics
3 Engineers (IEEE) Standards Association. *See* Compl. ¶¶3–4, 72–74, 97. Netgear, in
4 contrast, makes and sells networking products like routers, mesh systems, mobile
5 devices, and smart devices that implement Wi-Fi 6 technologies. *Id.* ¶14. Netgear
6 claims that it is “a ready and willing licensee of Huawei’s Wi-Fi SEPs.” *Id.* ¶7. But
7 it alleges that Huawei “is refusing to license [Huawei’s] patents on RAND
8 [reasonable and non-discriminatory] terms,” including by allegedly “demanding
9 excessive and discriminatory royalties,” and “discriminating . . . in its pricing
10 demands” for those royalties. *Id.* ¶6.

11 In the normal course, an SEP licensing dispute like this one—if it cannot be
12 resolved through negotiation—would be adjudicated in the form of a routine breach-
13 of-contract claim (to the extent the plaintiff can state a claim for breach) or as a
14 counterclaim to the patent holder’s assertion of patent infringement. *See, e.g.,*
15 *Koninklijke Philips N.V. v. Thales DIS AIS USA LLC*, 39 F.4th 1377, 1379 (Fed. Cir.
16 2022). But in a retaliatory counter move to Huawei’s enforcement of foreign patent
17 rights and in a clear attempt to improperly amplify leverage, Netgear cloaks its
18 underlying licensing dispute claim as something far more sinister and grandiose:
19 antitrust violations premised on an alleged “scheme to defraud and dominate markets
20 worldwide,” and civil RICO violations premised on alleged attempts “to extract
21 supracompetitive rates” from SEP implementers, and to misappropriate unrelated
22 intellectual property from other U.S. companies. Compl. ¶¶2, 8–10.

23 Huawei’s Motion to Strike targets a specific set of factual allegations that are
24 necessary to Netgear’s civil RICO claims—*i.e.*, its third and fourth causes of action.
25 These claims require pleading a “pattern of racketeering activity,” which at a
26 minimum “requires commission of at least two enumerated predicate offenses within
27 a ten-year period [that are] related and ‘amount to or pose a threat of continued
28

1 criminal activity.” *Attia*, 2018 WL 2971049, at *14 (quoting *H.J. Inc. v. Nw. Bell Tel.*
2 *Co.*, 492 U.S. 229, 239 (1989)).

3 In an attempt to satisfy this standard, Netgear pleads that “Huawei has engaged
4 in a *pattern of racketeering activity* for many years and defrauded *many victims, not*
5 *just NETGEAR.*” Compl. ¶9. But the “pattern” that Netgear alleges is, in fact, two
6 separate alleged “patterns” involving distinct types of alleged misconduct. And both
7 “patterns” are derived entirely from allegations in other lawsuits that were never
8 adjudicated and to which Netgear was never a party.

9 Netgear’s first civil RICO theory rests on Huawei’s purported scheme to
10 extract “non-RAND” licenses from companies that use standards that incorporate
11 Huawei SEPs. *Id.* ¶¶8–10. According to Netgear, the scheme seeks “to defraud SSOs
12 [standard setting organizations] and victim United States companies by knowingly
13 misrepresenting its RAND commitments and failing to comply with its RAND
14 obligations.” *Id.* ¶¶151–152. The “victim United States companies” that Netgear
15 identifies are non-parties ADVA, Verizon, Harris/L3Harris, and T-Mobile, each of
16 whom either sued or filed counterclaims against Huawei in separate litigations. *See*
17 *id.* ¶¶171–253.² The standards at issue are unrelated to IEEE’s Wi-Fi standards.³ And
18 the misconduct that Netgear pleads against Huawei consists of direct quotations from
19 the non-parties’ unadjudicated complaints or counterclaims, with no indication that

20
21 ² Although Netgear includes itself as one of the “victim companies” purportedly
22 injured by Huawei with respect to Huawei’s licensing negotiations, *see id.* ¶¶159–
23 170, the bulk of Netgear’s civil RICO allegations pertain to alleged misconduct by
Huawei against *non-party* “victim companies”—allegations about which Netgear
has no first-hand knowledge. *Id.* ¶¶171–253.

24 ³ The standards and corresponding SSOs relevant to each non-Netgear “victim”
25 company are as follows: (1) for ADVA, ethernet and optical transport network
26 (OTN) standards promulgated by the Telecommunication Standardization Sector of
27 the International Telecommunication Union (ITU-T), *see* Compl. ¶¶174, 176–177,
28 (2) for Verizon, OTN standards promulgated by ITU-T, *see id.* ¶¶203–205, (3) for
Harris/L3Harris, ethernet, LTE, and Power over Ethernet standards promulgated by
IEEE, the European Telecommunications Standards Institute (ETSI), and the 3rd
Generation Partnership Project (3GPP), *see id.* ¶¶221–227, and (4) for T-Mobile, 4G
mobile standards promulgated by ETSI, *see id.* ¶¶236, 239–240.

1 Netgear conducted any independent investigation into the facts as alleged. *Id.* ¶¶171–
2 186 (ADVA), ¶¶187–213 (Verizon), ¶¶214–231(Harris/L3Harris), ¶¶232–253 (T-
3 Mobile).

4 Netgear’s second civil RICO theory rests on a vague “pattern of conduct” by
5 Huawei to “operate and grow its business by misappropriating the intellectual
6 property of several United States companies, beginning in or about 2000.” Compl.
7 ¶¶255. Netgear does not plead how this alleged “pattern” is related RAND
8 negotiations with Netgear, ADVA, Verizon, Harris/L3Harris, or T-Mobile. And the
9 allegations on which this “pattern” are based are taken from “a Third Superseding
10 Indictment in the United States District Court for the Eastern District of New York”
11 filed “against Huawei, Futurewei, Huawei Device USA, and others.” Compl. ¶255
12 (citing *United States v. Huawei Techs. Co., Ltd.*, No. 1:18-cr-457, Dkt. 126 (E.D.N.Y.
13 Feb. 13, 2020)); *id.* ¶¶256–264.

14 At bottom, Netgear’s “pattern of racketeering” allegations depend almost
15 entirely on allegations of misconduct against non-Netgear entities, all of which derive
16 from non-adjudicated pleadings in other cases. Because “Plaintiffs may not simply
17 regurgitate other parties’ pleadings to establish a pattern of predicate acts,” and
18 because these non-party “lawsuits form the entire basis for [Netgear’s] alleged RICO
19 pattern, all of [Netgear’s] RICO causes of action are deficient.” *Attia*, 2018 WL
20 2971049, at *15.⁴

21 **III. ARGUMENT**

22 **A. Courts routinely strike allegations that are derived from pleadings** 23 **in other actions.**

24 Rule 12(f) authorizes courts to “strike from a pleading an insufficient defense
25 or any redundant, immaterial, impertinent, or scandalous matter.” FED. R. CIV. P.

26 ⁴ The only remaining allegations underlying Netgear’s RICO claims relate solely to
27 Netgear’s claim regarding Huawei’s statements to the IEEE regarding FRAND
28 obligations for Wi-Fi standards. Those remaining allegations are addressed
separately in Huawei’s Motion to Dismiss filed concurrently with this Motion to
Strike.

1 12(f). “The overall purpose of a Rule 12(f) motion is ‘to avoid the expenditure of
2 time and money that must arise from litigating spurious issues by dispensing with
3 those issues prior to trial’ to streamline the litigation process.” *Mend Health, Inc. v.*
4 *Carbon Health Techs., Inc.*, No. 2:21-cv-6142-AB (MRW), 2023 WL 2628105, at *2
5 (C.D. Cal. Jan. 13, 2023) (granting motion to strike and quoting *Whittlestone, Inc. v.*
6 *Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010)).

7 “[R]eferences to preliminary steps in litigations and administrative
8 proceedings that did not result in an adjudication on the merits or legal or permissible
9 findings of fact are, as a matter of law, *immaterial* under Rule 12(f) of the Federal
10 Rules of Civil Procedure.” *In re Merrill Lynch & Co., Inc. Research Reports Sec.*
11 *Litig.*, 218 F.R.D. 76, 78 (S.D.N.Y. 2003). Thus, “[a]s a general rule, paragraphs in a
12 complaint that are either based on, or rely on, complaints in other actions that have
13 been dismissed, settled, or otherwise not resolved, are, as a matter of law, immaterial
14 within the meaning of FED. R. CIV. P. 12(f).” *In re Countrywide Fin. Corp. Mortg.-*
15 *Backed Sec. Litig.*, 934 F. Supp. 2d 1219, 1226 (C.D. Cal. 2013); *see Kyung Cho v.*
16 *UCBH Holdings, Inc.*, 890 F. Supp. 2d 1190, 1203 (N.D. Cal. 2012) (“allegations in
17 [an] indictment against [defendants]” cannot be used to substantiate claims in
18 securities-fraud class action complaint); *RSM Prod. Corp. v. Fridman*, 643 F. Supp.
19 2d 382, 404 (S.D.N.Y. 2009) (striking allegations derived from complaints in two
20 non-party actions, which “are immaterial as a matter of law”), *aff’d*, 387 F. App’x 72
21 (2d Cir. 2010).

22 Courts thus routinely strike allegations that are lifted from the pleadings of a
23 non-party in a separate litigation—particularly when, as here, the plaintiff does not
24 plead that it verified the facts taken from the non-party’s complaint through an
25 independent investigation:

- 26 • In *In re Connetics*, a securities class action, the court struck 20 paragraphs that
27 the plaintiffs had merely “lift[ed] allegations from an SEC complaint.” 542 F.
28 Supp. 2d at 1004–06. Citing the attorney’s “nondelegable responsibility” under

1 FED. R. CIV. P. 11 to “personally . . . validate the truth and legal reasonableness
2 of the papers filed,” and “to conduct a reasonable factual investigation,” *id.* at
3 1005 (citation omitted), the court struck all paragraphs in the plaintiffs’
4 complaint in which “the information in th[ose] paragraphs was taken directly
5 from the SEC complaint with no additional investigation” by the plaintiffs’
6 attorneys. *Id.* at 1006.

- 7 • In *Maine State*, the court struck specific paragraphs from a complaint that were
8 taken entirely from other complaints where “Plaintiffs’ counsel does not claim
9 to have taken . . . any other measures to investigate the bases for allegations in
10 other complaints they cite,” such as “speak[ing] to the ‘sources,’”
11 “examin[ing] the purported internal [source] documents,” or “contact[ing]
12 attorneys in the other cases from which they copied allegations to discuss the
13 basis for the claims.” 2011 WL 4389689, at *19–21.
- 14 • In *Fraker v. Bayer Corporation*, the court struck eight paragraphs from a
15 complaint of deceptive advertising where the “Plaintiff’s claims
16 of *wrongdoing* are based on factual allegations made in, on inferred from,
17 either the [FTC] Consent Decree or the FTC [cease and desist] Order.” No.
18 1:08-cv-1564, 2009 WL 5865687, at *5 (E.D. Cal. Oct. 2, 2009). As the court
19 explained, other than the non-party FTC documents that the plaintiff relied on
20 in its complaint, “the court can find no independently acquired evidence that
21 would tend to support Plaintiff’s central allegations of deceptive advertising.”
22 *Id.*
- 23 • In *ScriptsAmerica, Inc. v. Ironridge Global LLC*, the court struck “pattern of
24 fraud” allegations in a securities case—*i.e.*, that defendant David Sims
25 committed “31 other alleged instances of fraud and manipulation”—where the
26 allegations were derived from a decision in a separate litigation to exercise
27 personal jurisdiction over Sims. No. 2:14-cv-3962-MMM (AGR_x), 2015 WL
28 12747908, at *21–22 (C.D. Cal. Mar. 26, 2015).

- 1 • In *Scognamillo v. Credit Suisse First Boston LLC*, the court struck allegations
2 in 10 paragraphs of a complaint derived from “unadjudicated government
3 investigations, regulatory actions, and other litigation.” No. 2:03-cv-2061,
4 2005 WL 8162733, at *6 (N.D. Cal. Feb. 1, 2005).

5 **B. The Court should strike non-party allegations that Netgear relies**
6 **on to plead a “Pattern of Fraud” regarding RAND commitments.**

7 The Court should strike each of Netgear’s allegations that Huawei engaged in
8 a “pattern of non-RAND licensing negotiations and coercive threats of injunctions
9 and litigation” involving “other United States victim companies.” Compl. ¶316.
10 Specifically, the Court should strike paragraphs 174–186, 201–213, 220–231, 239–
11 252, and those portions of paragraphs 314–316 that concern entities other than
12 Netgear. The factual bases for this alleged “pattern of fraud” are derived entirely from
13 (and in fact consist of direct quotes from) complaints or counterclaims asserted by
14 non-parties in separate litigations, each of which was resolved without any judgment,
15 determination of liability, or finding of fact.

16 **ADVA Optical Networking (ADVA):** Netgear alleges that Huawei engaged
17 in a “scheme to defraud ADVA and to extract non-RAND rates” for patents on non-
18 Wi-Fi 6 technology “with the purpose of injuring ADVA.” Compl. ¶186. To support
19 that claim, Netgear alleges misconduct by Huawei against ADVA, *see id.* ¶¶174–185
20 & n.47, which consists of direct quotes from ADVA’s complaint against Huawei in
21 *ADVA Optical Networking NA, Inc. v. Huawei Technologies Co., Ltd.*, No. 2:23-cv-
22 201, Dkt. 1 (E.D. Tex. May 8, 2023). The allegations include factual assertions that
23 are uniquely within the knowledge of ADVA and not Netgear—including ADVA’s
24 “reliance” on Huawei in implementing non-Wi-Fi technologies like OTN, its
25 negotiations with Huawei over licenses for non-Wi-Fi patents, and its motivations for
26 filing suit against Huawei. *See* Compl. ¶¶177, 179, 182–184. The *ADVA* case resolved
27 by stipulation of dismissal. *See ADVA*, No. 2:23-cv-201, Dkt. 34 (E.D. Tex. Aug. 25,
28

1 2023). The Court should strike the ADVA-related allegations at ¶¶174–186 from
2 Netgear’s Complaint.

3 Netgear may argue that because Netgear’s counsel in this case, Blair Jacobs,
4 was ADVA’s counsel in the *ADVA* case, it can therefore rely on ADVA’s pre-suit
5 investigation as if it were Netgear’s own. But critically, *Netgear* does not plead that
6 it relied on information other than what is stated on the face of the *ADVA* complaint
7 (such as information gleaned from ADVA’s pre-suit investigation). For good reason.
8 All such information may be, and likely is, encumbered with and shielded from
9 disclosure by one or more confidentiality obligations, ethical duties, or privileges (to
10 ADVA and/or others) that Mr. Jacobs cannot unilaterally disregard. *See, e.g.*, Cal.
11 Bus. & Prof. Code § 6068(e)(1); Cal. R. Prof. Conduct 1.6. And none of the
12 allegations in ADVA’s complaint “result[ed] in an adjudication on the merits,”
13 rendering them “immaterial under Rule 12(f).” *In re Merrill Lynch*, 218 F.R.D. at 78.

14 **Verizon:** Netgear similarly alleges that Huawei engaged in a “scheme to
15 defraud Verizon and to extract non-RAND rates” for patents on non-Wi-Fi 6
16 technology “with the purpose of injuring Verizon.” Compl. ¶213. To support this
17 claim, Netgear alleges misconduct by Huawei against Verizon, *see id.* ¶¶201–213 &
18 n.49, which consists of direct quotes from Verizon’s answer and counterclaims
19 asserted against Huawei in *Huawei Technologies Co., Ltd. v. Verizon*
20 *Communications, Inc.*, No. 2:20-cv-30, Dkt. 155 (E.D. Tex. Jan. 11, 2021). The
21 allegations include factual assertions that are uniquely within Verizon’s knowledge,
22 such as Verizon’s reasons for incorporating standard-essential functionality into its
23 products (unrelated to Wi-Fi 6), its negotiations with Huawei over non-Wi-Fi SEP
24 licenses, and its reliance on Huawei’s RAND commitments unrelated to the IEEE
25 Wi-Fi 6 standard. *See* Compl. ¶¶205–209, 212. The *Verizon* case resolved by a joint
26 motion to dismiss. *See Verizon*, No. 2:23-cv-201, Dkt. 486 (E.D. Tex. Jul. 11, 2021).
27 The Court should strike the Verizon-related allegations at ¶¶174–186 from Netgear’s
28 Complaint.

1 **Harris/L3Harris:** Netgear also alleges that Huawei engaged in a “scheme to
2 defraud Harris/L3Harris and to extract non-RAND rates” for patents on non-Wi-Fi 6
3 technology “with the purpose of injuring Harris/L3Harris.” Compl. ¶231. To support
4 this claim, Netgear alleges misconduct by Huawei against Harris/L3. *See id.* ¶¶220–
5 231 & n.52. The allegations comprise direct quotes from Harris/L3Harris’s answer
6 and counterclaims asserted against Huawei in *Huawei Device USA Inc. v. Harris*
7 *Corp.*, No. 2:19-cv-222, Dkt. 5 (E.D. Tex. June 25, 2019) and *Huawei Techs. Co.,*
8 *Ltd. v. L3Harris Techs., Inc.*, No. 1:19-cv-1306, Dkt. 8 (D. Del. Aug. 19, 2019). The
9 allegations include factual assertions that are uniquely within Harris/L3Harris’s
10 knowledge, including Harris/L3Harris’s licensing negotiations with Huawei over
11 non-Wi-Fi related technologies and its claimed willingness to license Huawei’s SEPs
12 on non-Wi-Fi patents. Compl. ¶¶220, 226–229. The two *Harris/L3Harris* cases
13 resolved by stipulation of dismissal. *See* No. 2:19-cv-222, Dkt. 16 (E.D. Tex. Nov.
14 19, 2019); No. 1:19-cv-1306, Dkt. 26 (E.D. Tex. Nov. 15, 2019). The Court should
15 strike the Harris/L3Harris-related allegations at ¶¶220–231 from Netgear’s
16 Complaint.

17 **T-Mobile:** Netgear alleges that Huawei engaged in a “scheme to defraud T-
18 Mobile and to extract non-RAND rates” for patents on non-Wi-Fi 6 technology “with
19 the purpose of injuring T-Mobile.” Compl. ¶253. To support this claim, Netgear
20 alleges misconduct by Huawei against T-Mobile. *See id.* ¶¶239–253 & n.55. The
21 allegations comprise direct quotes from T-Mobile’s answers/counterclaims asserted
22 against Huawei in a consolidated set of cases captioned as *Huawei Techs. Co. Ltd. v.*
23 *T-Mobile US Inc.*, No. 2:16-cv-52, Dkt. 106; No. 2:16-cv-55, Dkt. 107; No. 2:16-cv-
24 56, Dkt. 108; No. 2:16-cv-57, Dkt. 106 (E.D. Tex. Jan. 15, 2016). The allegations
25 include factual assertions that are uniquely within T-Mobile’s knowledge, including
26 T-Mobile’s communications and negotiations with Huawei over non-Wi-Fi-related
27 SEP licenses, its assessment of the strength and applicability of Huawei’s non-Wi-Fi
28 patents to T-Mobile products, and T-Mobile’s internal decision-making processes

1 regarding whether to license Huawei’s non-Wi-Fi patents. *See* Compl. ¶¶236, 238–
2 242, 244–252. The *T-Mobile* cases resolved by stipulations of dismissal. *See* No.
3 2:16-cv-52, Dkt. 449; No. 2:16-cv-55, Dkt. 443; No. 2:16-cv-56, Dkt. 374; No. 2:16-
4 cv-57, Dkt. 373 (E.D. Tex. Dec. 22, 2017). The Court should strike the T-Mobile-
5 related allegations at ¶¶239–253 from Netgear’s Complaint.

6 Because Netgear does not plead any personal knowledge of the allegations
7 taken from the ADVA complaint or the counterclaims filed by Verizon,
8 Harris/L3Harris, or T-Mobile, and because Netgear does not allege that it has
9 independently verified the allegations from those pleadings, the Court should strike
10 the following paragraphs from Netgear’s Complaint: ¶¶174–186 (ADVA), 201–213
11 (Verizon), 220–231 (Harris/L3Harris), 239–253 (T-Mobile), and those portions of
12 ¶¶314–316 that contain the same allegations of misconduct concerning ADVA,
13 Verizon, Harris/L3Harris, and T-Mobile.

14 **C. The Court should strike non-party allegations that Netgear relies**
15 **on to plead a “Pattern of Fraud” regarding IP misappropriation.**

16 The Court also should strike Netgear’s allegations that Huawei engaged in a
17 separate “pattern” of “predicate acts . . . directed to the misappropriation of
18 intellectual property rights” from other, non-Netgear companies. Compl. ¶319.
19 Specifically, the Court should strike: paragraphs 255–262, 264, and 317. Here, too,
20 the allegations are taken directly from an unadjudicated pleading in a separate
21 litigation: the United States’ “Third Superseding Indictment” filed against Huawei
22 and other entities that is currently pending before the United States District Court for
23 the Eastern District of New York. *Id.* ¶255 (citing *United States v. Huawei Techs. Co.,*
24 *Ltd.*, No. 1:18-cr-457-AMD, Dkt. 126 (E.D.N.Y. Feb. 13, 2020)). The Third
25 Superseding Indictment, in turn, sets forth a series of alleged acts of misconduct
26 against various unnamed victim companies in the following timeframes: 2000–2002
27 (Company 1), 2002–2003 (Company 2), 2004 (Company 3), 2009 (Company 4),
28 2012–2013 (Company 5), 2013–2018 (Company 6). *See* No. 1:18-cr-457-AMD, Dkt.

1 126, ¶¶ 18–20, 25, 28, 30, 35, 45. None of the alleged misconduct concerns Wi-Fi
2 standards, let alone Wi-Fi 6 (which Netgear concedes was adopted long after any of
3 the conduct detailed in the Third Superseding Indictment allegedly occurred). *See*
4 Compl. ¶54.

5 Netgear’s allegations in its Complaint consist of direct quotes from the Third
6 Superseding Indictment and accompanying press releases from the United States
7 Department of Justice. *See* Compl. ¶¶255–257, 259–262, 264, & nn.56–57, 69.
8 Because the indictment does not name the alleged “victim companies,” Netgear also
9 cites news articles and blogs in an attempt to identify the anonymous “victim
10 companies” described in the indictment. *Id.* ¶258. The case has been set for trial on
11 January 5, 2026, and thus there has been no final adjudication or findings of fact. *See*
12 No. 1:18-cr-457 (Apr. 4, 2024, Minute Order setting trial).

13 Because Netgear does not plead any personal knowledge of the allegations
14 taken from the Third Superseding Indictment and does not allege that it has
15 conducted any independent investigation to verify the allegations contained therein,
16 the Court should also strike from Netgear’s Complaint ¶¶255–262, 264, and 317.

17 **IV. CONCLUSION**

18 For the reasons set forth above, Huawei respectfully asks the Court to grant
19 Huawei’s Motion to Strike, and to strike from Netgear’s Complaint ¶¶174–186, 201–
20 213, 220–231, 239–253, 255–262, 264, 314–316,⁵ and 317.

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⁵ Huawei does not move to strike those portions of ¶¶314–316 that reference
allegations of misconduct by Huawei against *Netgear*.

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Dated: June 14, 2024

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CERTIFICATION OF COMPLIANCE

The undersigned, counsel of record for *Huawei Technologies Co., Ltd.*, certifies that this brief does not exceed 25 pages, which:

- ___ complies with the word limit of L.R. 11-6.1.
- X complies with the page limit set by court order dated March 15, 2024 (ECF No. 41).

Dated: June 14, 2024

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