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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

L1 TECHNOLOGIES, INC.;  
SYNCWISE, LLC; and PIXELS  
MATTER, LLC,

Plaintiffs,

v.

SERHII CHEKANOV,

Defendant.

Case No.: 3:20-cv-00259-H-JLB

**ORDER DENYING DEFENDANT’S  
MOTION TO REOPEN CASE AND  
MOTION TO DISMISS**

[Doc. Nos. 91, 93.]

On August 30, 2023, following a one-day bench trial, the Court issued a memorandum decision in favor of Plaintiffs L1 Technologies, Inc., Syncwise, LLC, and Pixels Matter, LLC (“Plaintiffs”) and against Serhii Chekanov (“Defendant”). (Doc. Nos. 87, 89.) That same day, the Court issued a judgment awarding Plaintiff Pixels Matter, LLC (“Pixels Matter”) \$55,000 in damages plus costs as provided by law for its breach of contract cause of action and ordered Plaintiffs to file proposed injunctive relief. (Doc. No. 90.)

On September 4, 2023, Defendant filed a “motion to reopen case” and attached six (6) documents. (Doc. No. 91.) On September 8, 2023, the Court construed Defendant’s filing as a motion for reconsideration under Federal Rule of Civil Procedure 60(b) and set

1 a briefing schedule. (Doc. No. 92.) On September 10, 2023, Defendant filed a nearly  
2 identical motion to dismiss the complaint with seven (7) documents attached. (Compare  
3 Doc. No. 91, with Doc. No. 93.) On September 11, 2023, the Court construed Defendant’s  
4 motions as a single motion for relief under Federal Rule of Civil Procedure 60(b), re-set  
5 briefing deadlines, and scheduled a hearing for October 2, 2023. (Doc. No. 95.) On  
6 September 13, 2023, the Court provided an internet-accessible teams videoconference link  
7 and dial-in number for the October 2 hearing. (Doc. No. 96.) On September 22, 2023,  
8 Plaintiffs filed an opposition to Defendant’s motions. (Doc. No. 97.) On September 24,  
9 2023, Defendant filed an affidavit in support of his motions. (Doc. No. 98.) The Court,  
10 on September 25, 2023, directed Plaintiffs to respond to Defendant’s September 24 filing.  
11 (Doc. No. 99.) On September 26, 2023, Plaintiffs filed their response in opposition. (Doc.  
12 No. 100.) On October 2, 2023, the Court held a telephonic hearing on Defendant’s motions.  
13 (Doc. No. 101.) Patrick Nicholas Reid appeared in person for Plaintiffs. (Id.) Defendant  
14 did not attend. (Id.)

15 By the instant motions, Defendant seeks to reopen the case for the Court to consider  
16 his arguments and review the documents attached to his motions or, in the alternative,  
17 Defendant asks the Court to dismiss the complaint in its entirety. (Doc. Nos. 91, 93.)

## 18 **BACKGROUND**

19 The procedural history and facts of this case are well known to the Court. On  
20 February 11, 2020, Plaintiffs filed a complaint against Defendant<sup>1</sup> Serhii Chekanov. (Doc.  
21 No. 1.) On September 15, 2020, Plaintiffs filed a motion for leave to amend the complaint.  
22 (Doc. No. 18.) The Court granted Plaintiffs’ motion and on October 17, 2020, Plaintiffs  
23 filed a first amended complaint (“FAC”). (Doc. Nos. 23, 24.) In the FAC, Plaintiffs’ state  
24 that Defendant resided in Miami, Florida. (Doc. No. 24, FAC ¶ 24.) Plaintiff Pixels Matter  
25 entered into an independent contractor agreement with Defendant on July 1, 2019. (Id. ¶  
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28 <sup>1</sup> Additional Defendants Dmitry Fateev, Roman Kolesnikov, and VebrFOC, Inc. were  
dismissed from this litigation. (Doc. Nos. 16, 49, 68.)

1 18.) Pixels Matter hired Defendant as a software engineer and he was tasked with projects  
2 that focused on golf cart control that utilized Plaintiffs L1 Technologies, Inc. and Syncwise,  
3 LLC's confidential intellectual property. (Id. ¶ 19.) Plaintiffs allege that Defendant  
4 provided false information regarding his abilities as a software engineer as he was unable  
5 to perform the work he was hired to perform. (Id. ¶ 21.) Defendant was terminated in  
6 October 2019. (Id.) While Defendant was working for Pixels Matter, Plaintiffs allege he  
7 accessed Plaintiffs' confidential intellectual property on Pixels Matter computer servers,  
8 removed the confidential intellectual property from the servers, and absconded with it. (Id.  
9 ¶¶ 21, 22.) Shortly after Defendant left Plaintiffs, they allege that he utilized Plaintiff's  
10 intellectual property to create his own company, VeberFOC, Inc., that offers competing  
11 products at lower prices to Plaintiffs' customers. (Id. ¶¶ 22, 23, 29.) Based on these alleged  
12 actions, Plaintiffs sued Defendant for breach of contract, among other causes of action.  
13 (Doc. No. 24.)

14 On January 5, 2021, Defendant filed an answer to the FAC. (Doc. No. 32.)  
15 Following Defendant's answer, Magistrate Judge Burkhardt scheduled an Early Neutral  
16 Evaluation ("ENE") conference for March 24, 2021. (Doc. No. 33.) Defendant failed to  
17 file his ENE statement by the required date and failed to appear for the ENE conference.  
18 (Doc. Nos. 37, 39.) Judge Burkhardt issued an order setting a telephonic show cause  
19 hearing for April 7, 2021, regarding Defendant's failure to appear. (Doc. No. 41.)  
20 Defendant failed to appear at the telephonic show cause hearing. (Doc. No. 42.) Judge  
21 Burkhardt imposed a sanction of \$75 for Defendant's failure to appear. (Doc. No. 43.)

22 On November 3, 2021, Judge Burkhardt issued an order providing zoom information  
23 for the parties to appear remotely for the November 10, 2021, mandatory settlement  
24 conference ("MSC"). (Doc. No. 46.) Defendant failed to lodge his MSC statement and  
25 failed to appear at the November 10 MSC that was held by video. (Doc. Nos. 45, 47.)  
26 Judge Burkhardt issued an order setting a telephonic show cause hearing for December 16,  
27 2021, regarding Defendant's failure to appear. (Doc. No. 48.) Judge Burkhardt's order  
28 advised Defendant that if he could not afford to call into the Court's toll-free conference

1 line, he may request in his declaration that the Court convert the telephonic hearing to a  
2 video conference. (Id.) Defendant did not file the requisite declaration and failed to appear  
3 at the telephonic show cause hearing. (Doc. Nos. 50, 52.) Judge Burkhardt set an  
4 additional show cause hearing by video conference for February 25, 2022 and provided  
5 Defendant with a zoom link. (Doc. No. 52.) Defendant failed to appear. (Doc. No. 61.)

6 On February 7, 2022, Plaintiffs filed their initial pretrial memorandum prior to the  
7 February 14, 2022, pretrial conference.<sup>2</sup> (Doc. No. 53.) On February 23, 2022, Defendant  
8 filed a response that the Court construed as his pretrial memorandum. (Doc. No. 57.) In  
9 his response, Defendant stated that he was residing in the Ukraine. (Id.) Defendant filed  
10 an additional response on September 8, 2022. (Doc. No. 71.)

11 On February 14, 2022, the Court held a final pretrial conference. (Doc. No. 55.)  
12 The Court provided Defendant with nearly a year of notice of the date and time of the final  
13 pretrial conference because it was set on March 26, 2021, in the Court's scheduling order.  
14 (Doc. No. 40.) The Court also provided Defendant with a zoom link so that he could appear  
15 by video at the final pretrial conference. (Doc. No. 54.) Defendant failed to appear. (Doc.  
16 No. 55.) Defendant did not provide the Court with any reason for his absence. (Doc. No.  
17 56.)

18 The Court issued an order to show cause for Defendant's failure to appear and  
19 scheduled a show cause hearing and rescheduled the final pretrial conference for February  
20 28, 2022. (Doc. No. 56.) The Court provided Defendant with a zoom link so that he could  
21 appear by video at the show cause hearing and final pretrial conference. (Doc. No. 60.)  
22 Defendant failed to appear at the February 28 hearing. (Doc. No. 63.)

23 The Court repeatedly continued the order to show cause and final pretrial conference  
24 hearing. (Doc. Nos. 65, 67, 70, 72, 73, 74, 75.) Like his behavior before Judge Burkhardt,  
25 Defendant has routinely failed to comply with this Court's orders. (Doc. Nos. 55, 56, 63,  
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28 <sup>2</sup> In accordance with Court orders, Plaintiffs have filed three amended pretrial  
memorandums. (Doc. Nos. 62, 64, 69.)

1 77.) Specifically, Defendant has failed to appear for Court-ordered conferences and  
2 hearings on orders to show cause on numerous occasions. (Doc. Nos. 39, 42, 47, 50, 56,  
3 63, 77, 78, 81.) The Court has also consistently provided internet-accessible zoom or teams  
4 videoconference links and dial-in numbers free of charge to the parties. (Doc. Nos. 46, 54,  
5 59, 60, 76, 78, 81, 82, 96.)

6 On June 12, 2023, following the multiple continuances on the order to show cause  
7 and final pretrial conference hearing, the Court held a status conference and provided a  
8 video link so that Defendant could appear remotely. (Doc. No. 77.) At the conference,  
9 Plaintiffs indicated that they wished to proceed to trial and requested a one-day bench trial.  
10 (Id.) Defendant failed to appear. (Id.)

11 On June 22, 2023 the Court issued an order to show cause why Defendant should  
12 not be held in default and issued a scheduling order setting a trial date. (Doc. No. 78.) In  
13 the order, the Court gave the parties two (2) months' notice and scheduled the order to  
14 show cause hearing and final pre-trial conference for August 14, 2023 and a one-day bench  
15 trial for August 15, 2023. (Id.) The Court provided an internet-accessible teams  
16 videoconference link and dial-in number for the order to show cause hearing and final pre-  
17 trial conference as part of the order. (Id.)

18 On August 14, 2023, the Court held the final pre-trial conference hearing. (Doc. No.  
19 84.) Patrick Nicholas Reid appeared for Plaintiffs over the provided dial-in and  
20 videoconferencing link. (Id.) Defendant failed to appear. (Id.) The Court issued an order  
21 to show cause why Defendant should not be sanctioned, including terminating sanctions,  
22 for his failure to appear at the final pre-trial conference, failure to appear at the order to  
23 show cause hearing, failures to appear at numerous other Court ordered hearings, and  
24 failures to comply with Court orders. (Doc. No. 85.)

25 On August 15, 2023, the Court held a one-day bench trial. (Doc. No. 87.) Patrick  
26 Nicholas Reid appeared for Plaintiffs. (Id.) Defendant failed to appear. (Id.) Plaintiffs  
27 called Melanie Gregory, Chief Technical Officer, and President of Pixels Matter, as their  
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1 witness and the Court received into evidence Plaintiffs' exhibits attached to the pretrial  
2 order. (Id.)

3         Following the bench trial, on August 30, 2023, the Court issued a memorandum  
4 decision, ruling in favor of Plaintiff Pixels Matter's breach of contract cause of action and  
5 awarded Pixels Matter damages. (Doc. No. 89.) The Court also ruled in favor of Plaintiffs  
6 L1 Technologies, Syncwise, and Pixels Matter on their intentional interference with  
7 contractual relations, conversion, and defamation per se causes of action and awarded  
8 Plaintiffs equitable relief in lieu of damages. (Id.) Based on the reasons stated in the  
9 memorandum decision, on August 30, 2023, the Court also issued a judgment awarding  
10 Pixels Matter \$55,000 in damages plus costs as provided by law for its breach of contract  
11 cause of action. (Doc. No. 90.) In the judgment, the Court also stated that it will issue a  
12 permanent injunction for Plaintiffs on their remaining causes of action and awarded costs  
13 as provided by law. (Id.)

14         On September 4, 2023, Defendant filed a motion to reopen the case and attached six  
15 (6) documents to his motion. (Doc. No. 91.) On September 10, 2023, Defendant filed a  
16 nearly identical motion, requesting dismissal of the complaint with seven (7) documents in  
17 support of his arguments attached. (Compare Doc. No. 91, with Doc. No. 93.) On  
18 September 11, 2023, the Court construed both motions as a single motion for relief under  
19 Federal Rule of Civil Procedure 60(b) and scheduled a hearing for October 2, 2023. (Doc.  
20 No. 95.) On September 13, 2023, the Court provided an internet-accessible teams  
21 videoconference link and dial-in number for the October 2 hearing to the parties. (Doc.  
22 No. 96.) On September 22, 2023, Plaintiffs filed an opposition to Defendant's motions.  
23 (Doc. No. 97.) On September 24, 2023, Defendant filed an affidavit in support of his  
24 motions. (Doc. No. 98.) In his September 24 filing, Defendant indicated that he could not  
25 attend the October 2 hearing due to his military service and requested that the Court review  
26 the documents attached to his motions. (Id.) On September 26, 2023, Plaintiffs filed their  
27 response in opposition to Defendant's September 24 filing. (Doc. No. 100.) On October  
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1 2, 2023, the Court held a hearing on Defendant’s motions. (Doc. No. 101.) Patrick  
2 Nicholas Reid appeared in person for Plaintiffs. Defendant did not attend the hearing. (Id.)

3 Now, in addition to construing Defendant’s motions under Federal Rule of Civil  
4 Procedure 60(b), the Court also considers Defendant’s motions under Federal Rules of  
5 Civil Procedure 59(a)(2) and 59(e). In its discretion, the Court re-opens this case for the  
6 limited purpose of accepting and considering Defendant’s arguments and the documents  
7 attached to his motions. However, for the reasons that follow, the Court denies Defendant’s  
8 motions and declines to alter, amend, or vacate its August 30, 2023 judgment finding in  
9 favor of Plaintiffs and against Defendant.

## 10 DISCUSSION

### 11 I. Legal Standard

12 The Court construes Defendant’s motion to reopen the case, (Doc. No. 91), and  
13 motion to dismiss the complaint, (Doc. No. 93), as a motion for reconsideration under  
14 Federal Rule of Civil Procedure 60(b), or in the alternative, a motion to alter or amend the  
15 judgment under Federal Rule of Civil Procedure 59(e). The Court also considers  
16 Defendant’s motions under Federal Rule of Civil Procedure 59(a)(2).

17 Rule 60(b) provides: “[o]n motion and just terms, the court may relieve a party or its  
18 legal representative from a final judgment, order, or proceeding” for certain enumerated  
19 reasons including: mistake, newly discovered evidence, fraud, a void judgment, a satisfied  
20 judgment, and any other reason that justifies relief. Fed. R. Civ. P. 60(b)(1)-(6). “[A]  
21 motion for reconsideration should not be granted, absent highly unusual circumstances,  
22 unless the district court is presented with newly discovered evidence, committed clear  
23 error, or if there is an intervening change in the controlling law.” 389 Orange St. Partners  
24 v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999). Notably, “[a] motion for reconsideration  
25 may not be used to raise arguments or present evidence for the first time when they could  
26 reasonably have been raised earlier in the litigation.” Marlyn Nutraceuticals, Inc. v. Mucos  
27 Pharma GmbH & Co., 571 F.3d 873, 880–81 (9th Cir. 2009) (citation omitted); see also  
28 U.S. v. Westlands Water Dist., 134 F.Supp.2d 111, 1131 (E.D. Cal. 2001) (“A motion for

1 reconsideration is not a vehicle to reargue the motion or to present evidence which should  
2 have been raised before.”).

3 Rule 59(e) provides: “[a] motion to alter or amend a judgment must be filed no later  
4 than 28 days after the entry of judgment.” Fed. R. Civ. P. 59(e). Because “specific grounds  
5 for a motion to amend or alter are not listed in the rule, the district court enjoys considerable  
6 discretion in granting or denying the motion.” McDowell v. Calderon, 197 F.3d 1253,  
7 1255 n. 1 (9th Cir. 1999) (en banc) (per curiam) (internal quotation marks omitted). But  
8 amending a judgment after its entry remains “an extraordinary remedy which should be  
9 used sparingly.” Id. In general, four grounds justify relief under Rule 59(e): (1) to correct  
10 manifest errors of law or fact upon which the judgment rests; (2) to present newly  
11 discovered or previously unavailable evidence; (3) to prevent manifest injustice; or (4) to  
12 correct for an intervening change in controlling law. Allstate Ins. Co. v. Herron, 634 F.3d  
13 1101, 1111 (9th Cir. 2011). Rule 59(e) “may not be used to relitigate old matters, or to  
14 raise arguments or present evidence that could have been raised prior to the entry of  
15 judgment.” Exxon Shipping Co. v. Baker, 554 U.S. 471, 486 n. 5 (2008) (citation omitted).  
16 See e.g., Kona Enterprises, Inc. v. Est. of Bishop, 229 F.3d 877, 890–91 (9th Cir. 2000)  
17 (finding district court properly denied Rule 59(e) relief when plaintiffs had numerous  
18 opportunities to present the arguments and evidence that plaintiffs raised for the first time  
19 in their post-trial motion).

20 Rule 59(a)(2) states: “[a]fter a nonjury trial, the court may, on motion for a new trial,  
21 open the judgment if one has been entered, take additional testimony, amend findings of  
22 facts and conclusions of law or make new ones, and direct the entry of a new judgment.”  
23 Fed. R. Civ. P. 59(a)(2). There are three grounds for granting a new trial in court-tried  
24 actions under Rule 59(a)(2): (1) manifest error of law; (2) manifest error of fact; and (3)  
25 newly discovered evidence. Brown v. Wright, 588 F.2d 708, 710 (9th Cir. 1978). A  
26 “defendant’s desire to introduce additional evidence after losing the case [does] not  
27 constitute a proper ground for granting a new trial” under Rule 59(a)(2). Id. Chapman v.  
28 Pismo Food Store, No. 215CV02373SVWAGR, 2016 WL 11520381 at \*2 (C.D. Cal. Sept.



1 1, 2016) (finding no grounds justifying Rule 59(a)(2) relief when plaintiff had an  
2 opportunity to present the evidence raised in its motion at trial).

## 3 **II. Analysis**

4 Defendant asks the Court to reopen the case or, in the alternative, dismiss the  
5 complaint. (Doc. Nos. 91, 93.) He submits thirteen (13) documents in support of the  
6 motions.<sup>3</sup> (Id.) Defendant requests that the Court “review all the documents without [his]  
7 participation.” (Doc. No. 98 ¶ 6.) Specifically, Defendant asserts that he completed work  
8 for Pixels Matter and asks the Court to take note of various payments, a Ukrainian lawsuit,  
9 and a letter from a Ukrainian tax official. (Doc. Nos. 91, 93.) Defendant also makes several  
10 arguments pertaining to his work with Pixels Matter and alleges Plaintiffs engaged in  
11 numerous wrongdoings. (Id.)

12 Defendant states that he was unable to submit any evidence prior to trial or attend  
13 the one-day bench trial in August 2023 because he was on a combat mission in the Ukraine.  
14 (Id.) Defendant’s military service in the Ukrainian conflict causes the Court significant  
15 pause. However, the Court’s March 26, 2021, scheduling order, in accordance with Federal  
16 Rule of Civil Procedure 26(a)(3), set the deadline for Defendant to disclose any documents  
17 or other exhibits as January 14, 2022, before the conflict in Ukraine broke out. (Doc. No.  
18 40.) All but one of the exhibits attached to Defendant’s present motions predate the Court’s  
19 January 14, 2022 deadline.<sup>4</sup> (Doc. No. 91, Exs. 1–5; Doc. No. 93, Exs. 1–5, 7.)

20 Considering Defendant’s military obligations, the Court continued the order to show  
21 cause and final pretrial conference hearings numerous times, (Doc. Nos. 65, 67, 70, 72, 73,  
22 74, 75), and routinely provided teams videoconference links and dial-in numbers free of  
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25 <sup>3</sup> Like his motions, many of Defendant’s exhibits are duplicates. (Compare Doc. No. 91,  
26 Exs. 1–6, with Doc. No. 93, Exs. 1–7.)

27 <sup>4</sup> One document—an order in a Ukrainian lawsuit, (Doc. No. 91, Ex. 6; Doc. No. 93, Ex.  
28 6)—postdates January 14, 2022. The Ukrainian court issued its order on November 1,  
2022. However, this was still eleven (11) months before Defendant’s final deadline to  
submit trial exhibits. (Doc. No. 78.)

1 charge to Defendant to facilitate his participation. (Doc. Nos. 46, 54, 59, 60, 76, 78, 81,  
2 82, 96.) The Court gave Defendant two (2) months' notice of the final pre-trial conference  
3 and one-day bench trial. (Doc. No. 78.) Defendant did not appear. (Doc. No. 87.)  
4 Defendant's failure to appear in defiance of Judge Burkhardt's and this Court's orders  
5 throughout this lawsuit is well documented. (Doc. Nos. 39, 42, 47, 50, 56, 63, 77, 78, 81,  
6 101.).

7 In his motions, Defendant asserts that his military service prevented him from  
8 attending the Court's October 2, 2023 hearing because going on the Internet "can open our  
9 positions to the enemy." (Doc. No. 98 ¶ 6.) However, there is ample evidence that  
10 Defendant received communications from this Court via the Internet during his military  
11 service. For example, Defendant filed the present motions through electronic means within  
12 ten (10) days of the Court's entry of judgment in favor of Plaintiffs and against Defendant.  
13 (Doc. Nos. 90, 91, 93.) Defendant has used the Internet repeatedly to submit documents  
14 electronically in this case. (Doc. Nos. 32, 57, 71, 91, 92, 98.) The Court is skeptical of  
15 Defendant's excuse that his military service interfered with his ability to attend the October  
16 2, 2023 hearing. The hearing was specifically scheduled at a reasonable time in the Ukraine  
17 (7:00 pm) to facilitate Defendant's participation in the hearing on his own motions. (Doc.  
18 No. 96.)

19 Despite Defendant's repeated failure to engage in this lawsuit and timely submit his  
20 arguments and exhibits, the Court, in its discretion, considers his arguments and accepts  
21 his exhibits for the limited purpose of including them in the record. The Court is cognizant  
22 that due to Defendant's failure to appear at the August 15, 2023 bench trial and the October  
23 2, 2023 hearing on the present motions, Plaintiffs lost the ability to cross-examine  
24 Defendant. At the October 2, 2023 hearing, Plaintiffs' counsel did not object to the Court  
25 entering Defendant's exhibits into the record for this limited purpose. The Court examines  
26 each of Defendant's arguments and exhibits in turn.

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1           **A. The Ukrainian Lawsuit**

2           Defendant “ask[s] the Court to refuse [this] Lawsuit . . . based [on a] Ukrainian court  
3 decision” entered on November 1, 2022. (Doc. No. 91 ¶ 12; Doc. No. 93 ¶ 12.) Defendant  
4 attached a copy of the court’s decision in Russian.<sup>5</sup> (Doc. No. 91, Ex. 6; Doc. No. 93, Ex.  
5 6). On November 2, 2020, Plaintiff Pixels Matter filed a lawsuit against Defendant in the  
6 Dzerzhynskyi District Court in Kharkiv, Ukraine. (Doc. No. 97, Ex. 1 at 11, 12.) Pixels  
7 Matter alleged various intellectual property right violations against Defendant. (Id.)  
8 Defendant participated in the Ukrainian lawsuit; he filed documents and appeared at a  
9 November 2022 court hearing in the Ukraine. (Id. at 12.) Pixels Matter did not pursue the  
10 Ukrainian lawsuit. (Id.) It did not appear at the November 2022 court hearing and did not  
11 “provide proper and admissible evidence” to support its claims. (Id.)

12           On November 1, 2022, Judge L.M. Rybalchenko dismissed Pixels Matter’s claims  
13 because “plaintiff did not add evidence to the case file to confirm the existence of copyright  
14 and intellectual property rights.” (Id. at 14.) For this reason, Judge Rybalchenko’s decision  
15 was not a decision on the merits, but rather based on Pixels Matter’s failure to prosecute  
16 its claims.<sup>6</sup> Even if the Ukrainian court decision had considered the merits of Pixels  
17 Matter’s claims, it would not be binding on this Court. According to the parties’ contract,  
18 California law governs the contractual relationship, not Ukrainian law. (Doc. No. 80, Ex.  
19 1 ¶ 11) (“This Agreement shall be construed and governed in accordance with the laws of  
20 the State of California.”). Given this provision, it is reasonable that Pixels Matter chose to  
21 abandon the Ukrainian case and prosecuted its claims in California under California law.  
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24 <sup>5</sup> At the Court’s request, (Doc. No. 95), Plaintiffs provided a certified translation of the  
25 Ukrainian court’s decision in English. (Doc. No. 97, Ex. 1.) Plaintiffs also submitted a  
26 non-certified translated copy of the Ukrainian court decision. (Id., Ex. 3.) Pursuant to  
27 Cal. R. of Ct., Rule 3.1110(g), the Court only considers the certified translated copy.

28 <sup>6</sup> Plaintiffs explain that they have attempted to contact the Pixels Matter’s Ukrainian  
attorney who was responsible for the lawsuit but have not received a response. (Doc. No.  
97 ¶ 25.)

1 Under Federal Rules of Civil Procedure 60(b), 59(e), and 59(a)(2), the Ukrainian  
2 court decision is not “newly discovered evidence.” Judge Rybalchenko entered the court’s  
3 order over eight (8) months before this Court issued its final scheduling order setting the  
4 trial date and over eleven (11) months before Defendant’s final deadline to submit trial  
5 exhibits. (Doc. No. 78.) Given that the Ukrainian court’s decision issued well before the  
6 final deadlines for Defendant to submit evidence in this case, it is not “newly discovered  
7 evidence.” The Court declines to alter, amend, or vacate the judgment because of the  
8 Ukrainian court decision.

### 9 **B. Validity of the Parties’ Contract**

10 Defendant contends that the parties’ July 1, 2019 contract “was an absolutely pure  
11 fake,” (Doc. No. 98 ¶ 2), and “that the plaintiff deliberately forged the contract.” (Doc.  
12 No. 91 ¶ 14; Doc. No. 93 ¶ 14.) Defendant attached two (2) prior contracts as evidence of  
13 the forgery: (1) “Independent Contractor Agreement # 58” between Defendant and Brian  
14 Verdugo (“Verdugo”), then CEO of 1L Technologies, dated August 6, 2018; and (2)  
15 “Independent Contractor Agreement # 58” between Defendant and Verdugo, dated May 1,  
16 2019. (Doc. No. 91, Ex. 1; Doc. No. 93, Ex. 1.) Again, these contracts are not “newly  
17 discovered evidence” under Federal Rules of Civil Procedure 60(b), 59(e) or 59(a)(2).  
18 Both contracts existed and were arguably within Defendant’s possession at the time trial  
19 exhibits were due in August 2023. Marlyn Nutraceuticals, Inc., 571 F.3d at 880–81 (Rule  
20 60(b) “may not be used to raise arguments or present evidence for the first time when they  
21 could reasonably have been raised earlier in the litigation.”).

22 Moreover, the Court finds no evidence of fraud justifying relief under Rule 60(b).  
23 Defendant’s prior contracts with Plaintiff 1L Technologies in 2018 and 2019 do not  
24 reasonably put the validity of the July 1, 2019 contract into question. The Court’s  
25 conclusion in its memorandum decision that the parties entered a valid contract is supported  
26 by the evidence admitted at trial. (Doc. No. 89 at 5.) Accordingly, the existence of the  
27 2018 and 2019 contracts do not constitute manifest error of law or fact under Rule 59(a)(2)  
28 or 59(e) and do not require the Court to augment its August 30, 2023 judgment.

1 Defendant inconsistently references Plaintiffs throughout his filings. (Doc. Nos. 91,  
2 93, 98.) For example, in Defendant’s motions he only names Plaintiff Pixels Matter but  
3 does not name Plaintiffs 1L Technologies or Syncwise. (Doc. Nos. 91, 93.) In support of  
4 his motions, Defendant names Plaintiffs Pixels Matter and 1L Technologies, but not  
5 Plaintiff Syncwise. (Doc. No 98.) There is no disputing that Plaintiffs 1L Technologies  
6 and Syncwise are plaintiffs in this matter. (Doc. No. 24 ¶ 1.). The Court disregards  
7 Defendant’s inconsistent naming of the Plaintiffs.

### 8 **C. Defendant’s Work Performance**

9 Defendant makes several arguments that Plaintiffs “misled [the Court] that [his]  
10 work was done poorly.” (Doc. No. 91 ¶ 3; Doc. No. 93 ¶ 3.) In sum, Defendant argues  
11 that (1) Pixels Matter paid him for his work; (2) Defendant needed more time than allotted  
12 to finish the work such that Pixels Matter’s early evaluation of his partial work product  
13 was unfair; and (3) Pixels Matter’s high expectations and demands set impossible tasks  
14 that Defendant could not complete as the sole engineer assigned to the task. (Doc. Nos.  
15 91, 93.) Defendant’s arguments are not “newly discovered evidence.” He had ample  
16 opportunities to make these claims before the conflict in Ukraine broke out and prior to  
17 trial. Nevertheless, the Court considers Defendant’s arguments and documents regarding  
18 his work performance.

19 Defendant attaches three payments that Pixels Matter made to him in June, July, and  
20 August 2019. (Doc. No. 91, Exs. 3–5; Doc. No. 93, Exs. 3–5.) He argues that Pixels Matter  
21 “agreed with the quality of work performed, otherwise [Pixels Matter] would not have  
22 paid” the invoices. (Doc. No. 91 ¶ 7; Doc. No. 93 ¶ 7.) In their opposition, Plaintiffs  
23 explain that Pixels Matter could not withhold payment based on Defendant’s performance  
24 and was contractually bound to pay Defendant irrespective of whether Defendant produced  
25 useable work product. (Doc. No. 97 ¶ 20.) The contract states: Defendant “shall secure  
26 high quality and competence of the services rendered.” (Doc. No. 80, Ex. 1 ¶ 5.) However,  
27 the contract does not give Pixels Matter the right to withhold payment from Defendant  
28

1 based on work quality alone. (Id.) Accordingly, these payments do not support  
2 Defendant’s argument that Pixels Matter was satisfied with his performance.

3 Defendant claims that Plaintiffs misrepresented the quality of his work with Pixels  
4 Matter to the Court. (Doc. Nos. 91, 93, 98.) Defendant notes that “there were . . . successful  
5 results and samples with good results,” but Plaintiff “showed [the Court] only  
6 [Defendant’s] failures. (Doc. No. 91 ¶ 7; Doc. No. 93 ¶ 7.) Defendant argues that he  
7 “completed the work as quickly and efficiently as possible.” (Doc. No. 91 ¶ 3; Doc. No.  
8 93 ¶ 3.) Defendant further asserts that Plaintiffs set unreasonable expectations and “gave  
9 impossible tasks” like assigning only Defendant to a task that “hundreds of people work  
10 on” in other organizations such as Tesla. (Doc. No. 91 ¶ 6; Doc. No. 93 ¶ 6.) As evidence  
11 of the long-term nature of the project and time needed to develop the work, Defendant  
12 attached a research and development plan from 2018. (Doc. No. 91, Ex. 2; Doc. No. 93,  
13 Ex. 2.) He claims that “it is impossible to evaluate [Defendant’s] work until it is completed  
14 in full,” which would have taken him at least another year or two. (Doc. No. 91 ¶ 4; Doc.  
15 No. 93 ¶ 4.)

16 At face value, Defendant’s arguments regarding his performance and Pixels Matter’s  
17 expectations are reasonable. Evaluation of work performance often leads to differing  
18 views, frequently with one party holding a higher opinion of the work performed than the  
19 other. However, ample evidence admitted at trial supports the Court’s conclusion that  
20 Defendant breached the July 1, 2019 contract by failing to accomplish his assigned work  
21 tasks in an acceptable manner. The Court heard testimony that Defendant lacked the basic  
22 knowledge and skills necessary to execute the job. (Doc. No. 88, 13:24-14:7.) Defendant,  
23 notably, failed to produce any functioning work-product. (Id.) Due to Defendant’s  
24 inability to produce any useful work product, Pixels Matter had to hire another engineer to  
25 redo all of Defendant’s work. (Id., 74:12-17.) Additionally, Pixels Matter had to reassign  
26 another engineer to the project to make up for the time lost by Defendant. (Id., 75:4-8,  
27 75:21-76:5.) The Court heard testimony that it took around a year for the two (2) engineers  
28 to redo Defendant’s work and to dig out of the hole caused by Defendant’s unproductivity.

1 (Id., 74:12-17, 75:4-8, 75:21-76:5.) Additionally, Defendant’s actions caused a significant  
2 delay in a project coming to market with a workable product which upset Plaintiffs’  
3 customers. (Id., 74:18-23.) In light of the well-established testimony and evidence  
4 admitted at trial, Defendant’s claims regarding his performance and Pixels Matter’s high  
5 expectations do not present manifest errors of law or fact justifying relief from the  
6 judgment.

7 Defendant also argues that Pixels Matter violated the July 2019 contract by  
8 terminating him without providing proper notice. (Doc. No. 91 ¶ 7; Doc. No. 93 ¶ 7.) (“The  
9 plaintiff did not notify me of the reason for terminating the contract, although his contract  
10 indicated that he needed to officially declare that the contract ended earlier than 1 month  
11 and hid every possible way what he would do with me.”) Defendant misstates the  
12 contractual provision. The parties’ contract provides: “[t]his Agreement may be terminated  
13 by either party before the Agreement expiration date but upon a fourteen (14) days’ written  
14 notification of the other party.” (Doc. No. 80, Ex. 1 ¶ 8.1.)

15 Reviewing the evidence presented at trial, it appears that Plaintiffs did not provide  
16 Defendant with fourteen days’ notice prior to his termination. (Doc. No. 88.) However,  
17 even assuming Plaintiffs failed to provide Defendant proper notice, the Court concludes  
18 that Plaintiffs were justified in waiving notice to Defendant based on the evidence  
19 presented at trial. Plaintiffs introduced evidence that Defendant refused to work with other  
20 Pixels Matter employees and became confrontational with his team members. (Id., 14:13-  
21 21.) Pixels Matter’s apparent failure to provide Defendant with notice does not constitute  
22 a manifest error of law or fact, nor does it justify altering the judgment in any way or  
23 dismissing the complaint.

#### 24 **D. Defendant’s Access to Confidential Information**

25 Defendant claims that he “did not have any access to [Plaintiffs’] confidential  
26 information and was guided only by open sources on [Plaintiffs’] social media.” (Doc. No.  
27 91 ¶ 8; Doc. No. 93 ¶ 8). At trial, the Court heard credible testimony that Defendant  
28 removed intellectual property belonging to L1 Technologies and Syncwise from Pixels

1 Matter’s computer servers and absconded with it. (Doc. No. 88, 15:2-8.) When Defendant  
2 worked at Pixels Matter, he had access to Pixels Matter’s servers and access to confidential  
3 intellectual property for the project he was working on. (Id., 13:14-23.) Despite certain  
4 security measures in place, a motivated individual could access intellectual property that  
5 he is not privy to on Pixels Matter’s servers. (Id., 57:12-25.) The Court heard testimony  
6 that not only did Defendant remove confidential information, but he has also said that he  
7 removed intellectual property belonging to L1 Technologies and Syncwise from Pixels  
8 Matter’s servers. (Id., 15:2-8.)

9 Moreover, the Court received into evidence multiple exhibits where Defendant  
10 claimed to have Plaintiffs’ intellectual property and was attempting to sell it at a reduced  
11 price. (Doc. No. 86, Exs. 2, 3, 4, 10.) For example, Plaintiffs’ admitted evidence that  
12 Defendant, following his termination in October 2019, used Plaintiff’s intellectual property  
13 to create a competing company, VeberFOC, Inc. (Doc. No. 86, Exs. 4, 5, 10.) VeberFOC’s  
14 website was almost identical to L1 Technologies’ website and offered the same products  
15 and technologies as Plaintiffs. (Doc. No. 88, 37:4-14, 37:16-38:24.) VeberFOC’s social  
16 media accounts also displayed images of Plaintiffs’ products, including one confidential  
17 prototype. (Doc. No. 86, Exs. 4, 10; Doc. No. 88, 26:11-27:17.) In short, the Court finds  
18 no manifest error of law or fact given the volume of credible evidence properly admitted  
19 at trial. Additionally, the Court finds no reason why Defendant could not have presented  
20 this argument prior to trial.

### 21 **E. Plaintiffs’ Alleged Tax Evasion and Other Wrongdoings**

22 In his motion to dismiss the complaint, Defendant alleges that Plaintiffs engaged in  
23 tax evasion. (Doc. No. 93.) In support, Defendant submits a letter from the State Tax  
24 Service of Ukraine, dated June 2, 2020.<sup>7</sup> (Id., Ex. 7.) Defendant further claims that  
25 “plaintiff did not go to [Ukrainian] court because he knew that the Security Service of  
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27  
28 <sup>7</sup> In accordance with the Court’s request, (Doc. No. 95), Plaintiffs submitted a certified  
translation of the letter in English. (Doc. No. 97, Ex. 2.)



1 Ukraine And Tax Police (Analog IRS in US) had come for him for forgery of documents.”  
2 (Doc. No. 93 ¶ 9.) Plaintiffs deny Defendant’s accusations of tax fraud. (Doc. No. 97 ¶¶  
3 15–17.) In pertinent part, the letter states: “[t]he information provided by [Defendant] has  
4 been analyzed, taken into consideration and taken into account in the work.” (*Id.*, Ex. 2 at  
5 18.) Reviewing the letter, the Court does not find any evidence that the State Tax Service  
6 determined that Plaintiffs engaged in tax evasion, forgery, or any other wrongdoing. (*Id.*)  
7 The State Tax Service simply thanked Defendant for making a report of alleged illegal  
8 activity. (*Id.* at 19.) (“[T]he State Tax Service in the Kharkiv region thanks you for your  
9 active citizenship.”).

10 Defendant misunderstands how corporate entities like Plaintiffs can legally change  
11 their corporate name and structure without running afoul of any U.S. or international tax  
12 laws. Defendant’s confusion is evident by his allegation that “plaintiff obviously deceived  
13 [the Court] and transferred payments of invoices from company to company specifically  
14 for tax evasion.” (Doc. No. 91 ¶ 3; Doc. No. 93 ¶ 3; see also Doc. No. 98 ¶ 7 (“plaintiff  
15 ceased to exist his company several times, so he obviously thought he had mixed up his  
16 tracks . . .”).)

17 Neither the letter nor Plaintiffs’ changes in corporate structure provides evidence of  
18 fraud or manifest error of law or fact to justify relief under Rules 60(b), 59(a)(2) or 59(e).  
19 Further, the letter was dated June 2, 2020, such that it could have been submitted by  
20 Defendant on numerous occasions, including before the conflict in the Ukraine started. As  
21 such, the letter cannot be “newly discovered evidence” under Rules 60(b), 59(a)(2), or  
22 59(e). See e.g., S.E.C. v. Platforms Wireless Int’l Corp., 617 F.3d 1072, 1100 (9th Cir.  
23 2010) (holding denial of defendant’s motion for reconsideration under Rule 59(e) proper  
24 when defendant could have challenged plaintiff’s arguments over a period of two (2)  
25 months).

26 Throughout his filings, Defendant calls Plaintiffs “fraudsters,” (Doc. No. 91 ¶ 13;  
27 Doc. No. 93 ¶ 13), “extortionists,” (Doc. No. 91 ¶ 8; Doc. No. 93 ¶ 8), and an “international  
28 criminal.” (Doc. No. 98 ¶¶ 2, 6.) Defendant makes outlandish statements like claiming

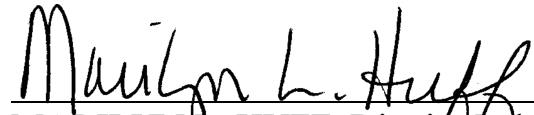
1 that he “is [Plaintiffs’] slave.” (Doc. No. 91 ¶ 3; Doc. No. 93 ¶ 3.) Additionally, Defendant  
2 frequently asserts that Plaintiffs lied to the Court under oath on numerous occasions. (Doc.  
3 Nos. 91, 93, 98.) The Court rejects these statements as puffed-up rhetoric with no basis in  
4 fact.

5 **CONCLUSION**

6 The Court re-opens the record for the limited purpose of considering Defendant’s  
7 arguments and the documents attached to Defendant’s motions. (Doc. No. 91, Exs. 1–6;  
8 Doc. No. 93, Exs. 1–7). After analyzing each of Defendant’s submissions, the Court denies  
9 Defendant’s motions and declines to alter, amend, or vacate the judgment entered on  
10 August 30, 2023. (Doc. No. 90.) The Court will issue injunctive relief as permitted by  
11 law, taking into account the facts and circumstances of the matter following this Order.

12 **IT IS SO ORDERED.**

13 DATED: October 10, 2023

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16 MARILYN L. HUFF, District Judge  
17 UNITED STATES DISTRICT COURT  
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