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13 *Counsel for Individual and Representative*
 14 *Plaintiffs Sarah Andersen, Kelly McKernan,*
Karla Ortiz, and the Proposed Class

16 [Additional Counsel Listed on Signature Page]

17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**
 19 **SAN FRANCISCO DIVISION**

20 SARAH ANDERSEN, et al.,
 21 Individual and Representative Plaintiffs,
 22 v.
 23 STABILITY AI LTD., et al.,
 24 Defendants.

Case No. 3:23-cv-00201-WHO

PLAINTIFFS' RULE 26(f) REPORT

1 **I. INTRODUCTION**

2 Pursuant to Federal Rule of Civil Procedure 26(f), a conference was held on Tuesday, August 8,
3 2023, between counsel for Plaintiffs Sarah Andersen, Kelly McKernan, and Karla Ortiz (“Plaintiffs”),
4 counsel for Defendants Stability AI Ltd. and Stability AI, Inc. (“Stability”), counsel for Defendant
5 Midjourney, Inc. (“Midjourney”), and counsel for Defendant DeviantArt, Inc. (“DeviantArt”)
6 (collectively, “Defendants”). Plaintiffs and Defendants, by and through counsel, met and conferred
7 concerning the topics set forth in Rule 26(f), and the United States District Court for the Northern
8 District of California’s Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored
9 Information and Guidelines for the Discovery of Electronically Stored Information. Pursuant to Rule
10 26(f)(2) and Civil Local Rule 16-9(a), Plaintiffs¹ hereby submit this Rule 26(f) Report in advance of the
11 Case Management Conference now scheduled for September 19, 2023. ECF No. 95.

12 **II. CASE MATTERS RELEVANT TO DISCOVERY**

13 **A. Discovery Motions**

14 Plaintiffs anticipate discovery motions, a motion for class certification, and summary judgment
15 motions.

16 **B. Amendments to Pleadings**

17 The Court has indicated it will likely grant leave to amend with respect to claims found deficient. If
18 claims are dismissed with leave to amend, Plaintiffs intend to file an amended complaint to address
19 pleading deficiencies identified by the Court.

20 **C. Evidence Preservation**

21 Plaintiffs have reviewed the Guidelines Relating to the Discovery of Electronically Stored
22 Information and have met and conferred pursuant to Rule 26(f) regarding reasonable and proportionate
23 steps taken to preserve evidence relevant to the issues reasonably evident in the case. Plaintiffs are
24 prepared to meet and confer to ensure other relevant evidence is preserved as necessary.

25 Plaintiffs have confirmed that they are preserving relevant evidence including ESI.

26 _____
27 1 Counsel for Defendants declined to participate in this Rule 26(f) Report. On August 8, 2023, the Court
28 entered an order continuing Rule 26 deadlines for Deviant Art and Midjourney, but ordered that Plaintiffs
and Stability AI to proceed with their Rules 26 obligations. ECF No. 95.

1 Plaintiffs have confirmed that they are not aware of any source of electronically stored information
2 that is reasonably expected to be subject to discovery that has been destroyed, not maintained or is not
3 reasonably accessible.

4 **D. Disclosures**

5 Plaintiffs served their Initial Disclosures as required by Rule 26(a)(1)(A) on August 22, 2023.
6 Plaintiffs will serve and supplement Initial Disclosures as necessary, as required by Rule 26(e).

7 **III. DISCOVERY**

8 **A. Scope of Discovery**

9 Plaintiffs believe that discovery is governed by the Federal Rules of Civil Procedure. Plaintiffs have
10 not identified specific concerns regarding the scope of discovery. Plaintiffs are prepared to continue to
11 meet and confer on this topic once requests for production of documents have been propounded.

12 **Subjects of Discovery from Defendants:** The following is a non-exhaustive list of subjects of
13 discovery from Defendants. Plaintiffs reserve all rights to expand upon these subject areas as the case
14 progresses:

- 15 • The interactions between Class members (including Plaintiffs) and Defendants.
- 16 • Defendants' conduct that caused their respective image generation products to ingest and
17 distribute copies and/or derivative works of the Works (as defined in the Complaint)—all without
18 CMI, including:
 - 19 ○ Defendants' actions in the creation, marketing, alteration, and operation of Stable
20 Diffusion, DreamStudio, the Midjourney product; and DreamUp;
 - 21 ○ Inter-Defendant and intra-Defendant communications regarding image generation
22 products; and
 - 23 ○ Complete or sufficient representative samples of Stable Diffusion, DreamStudio, the
24 Midjourney product; and DreamUp input and output, including pairs of prompts and
25 output.
- 26 • DeviantArt's knowledge and action that led to its alteration of its own Terms of Service and Privacy
27 Policy;
- 28 • Defendants' organizational structures related to image generation products.

- 1 • Contracts or other agreements between or among Defendants, Defendants and Plaintiffs, and
2 Defendants and third parties that relate to image generation products.
- 3 • Defendants’ corporate form and formation, capital structure, and ownership structure.
- 4 • Defendants’ financial records, including financial statements and other records showing
5 Defendants’ income, profit and loss, and other financial results derived from the sale, marketing,
6 and distribution of commercial products using or incorporating the Works.
- 7 • Information regarding all materials used to train Stable Diffusion, DreamStudio, the Midjourney
8 product; and DreamUp, including the materials themselves.
- 9 • Documents showing the injuries caused to Plaintiffs.
- 10 • Documents showing the economic and other damages caused by or resulting from Defendants’
11 conduct.
- 12 • Facts related to affirmative defenses raised by Defendants.
- 13 • Defendants’ policies regarding usage of copyrighted material.
- 14 • Defendants’ interactions with governmental or regulatory entities regarding their image generation
15 products, including document submissions, requests for information or documents, testimony
16 (Congressional or otherwise), and correspondence.
- 17 • Defendants’ participation in other lawsuits or private administrative proceedings regarding image
18 generation products.

19 **B. Discovery Limits**

20 Plaintiffs have met and conferred regarding the discovery limits set forth in the Federal Rules of
21 Civil Procedure and have indicated a likelihood that they will require expansion of the limits with respect
22 to the number of depositions and interrogatories.

23 **C. Production of Electronically Stored Information**

24 Plaintiffs have met and conferred pursuant to Rule 26(f) and have reviewed the Guidelines Relating
25 to the Discovery of Electronically Stored Information (“ESI Guidelines”). Plaintiffs are prepared to
26 continue to meet and confer on this topic to come to agreement on a stipulated order regarding production
27 of ESI. Plaintiffs have discussed the potential need for ESI Liaisons and are prepared to meet and confer
28 further on this topic once discovery requests have been served. Plaintiffs have discussed how responsive

1 material will be identified and metadata formatting for ESI and will continue to do so as discovery
2 progresses.

3 **D. Protective Order**

4 Plaintiffs have identified the need for a protective order to protect confidential and highly
5 confidential information once the parties begin producing documents. Plaintiffs will share a proposed
6 Stipulated Protective Order with Defendants.

7 **E. Privilege**

8 Plaintiffs will share a stipulated Privileged Materials Order under Rule 502(d) for Defendants'
9 consideration.

10 **F. Deposition Logistics**

11 Plaintiffs believe that in-person depositions are appropriate for all witnesses, either in the Northern
12 District or elsewhere in the United States. Plaintiffs are unaware of depositions to be taken outside the
13 United States at this time. Plaintiffs agree to meet and confer should any disputes arise as to location of
14 depositions and/or use of remote depositions.

15 **G. Discovery Issues and Potential Disputes**

16 Plaintiffs believe that certain discovery may commence between Plaintiffs and Stability. Plaintiffs
17 have not identified any specific discovery dispute—except that Plaintiffs do not agree any Defendant may
18 refuse to participate in the discovery process entirely. Plaintiffs are prepared to meet and confer on these
19 and any other discovery disputes that may arise.

20 Plaintiffs have agreed to electronic service in all instances where service is necessary and will
21 exchange service lists with Defendants should they also agree.

22 **H. Narrowing of Issues**

23 No issues have yet been narrowed by agreement or by motion. Plaintiffs are prepared to meet and
24 confer about narrowing potential issues should the circumstances of the case change.

25 **IV. SCHEDULING**

26 **A. Expedited Trial Procedures**

27 Plaintiffs believe this case is inappropriate for the Expedited Trial Procedure of General Order 64.
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B. Case Schedule

The parties met and conferred regarding the case schedule but have not come to an agreement. Plaintiffs are prepared to continue to meet and confer pending the Court’s upcoming order on the pending motions to dismiss and timing for amendments of Plaintiffs’ complaint. Should the Court wish to enter a case schedule, Plaintiffs are prepared to meet and confer regarding a proposed schedule.

1 Dated: August 22, 2023

By: /s/ Joseph R. Saveri
Joseph R. Saveri

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