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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SARAH ANDERSEN, et al.,

Individual and Representative Plaintiffs,

v.

STABILITY AI LTD., et al.,

Defendants.

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

PLAINTIFFS' OPPOSITION TO DEFENDANT RUNWAY AI, INC.'S REQUEST FOR JUDICIAL NOTICE AND CONSIDERATION OF DOCUMENTS INCORPORATED BY REFERENCE IN SUPPORT OF DEFENDANT RUNWAY AI, INC.'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Date: May 8, 2024
Time: 2:00 pm
Location: Videoconference
Before: Hon. William H. Orrick

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I. INTRODUCTION

In response to Plaintiffs' sufficiently alleged First Amended Complaint ("FAC"), Defendant Runway AI, Inc. ("Runway") attempts to impermissibly use both the doctrines of incorporation by reference and judicial notice to introduce factual issues at the pleading stage. In its Request for Judicial Notice and Incorporation by Reference, Runway asks the Court to take notice of judicial of pleadings from a separate case, *Kadrey et al., v. Meta Platforms, Inc* (*"Kadrey*"), which involved different parties, different allegations, and different AI models from the present case. ECF No. 165 at 1 ("Runway RJN"). Although the Court could properly judicially notice these pleadings for purposes *other* than the facts and content included within them (i.e., that the pleadings were filed on a certain date or in a certain sequence), Runway instead argues that the Court should judicially notice these documents for the similarity of the issues and arguments in the *Kadrey* case to the issues and arguments in this action. Runway RJN at 3. Because Runway has not set forth a proper reason for requesting judicial notice of the *Kadrey* pleadings, the Court should decline to grant Runway's request and refrain from allowing Runway to short-circuit fact-finding in this litigation by importing facts from another case which are not subject to fact-finding by a jury or this Court.

Runway also seeks to have the Court incorporate by reference three research papers to which the FAC already includes website citations. Therefore, all the content that Runway refers to in its RJN has already been incorporated into the FAC. In addition, the doctrine of incorporation by reference is inappropriate in this context because Exhibits C through E are not "central" to Plaintiffs' direct infringement claim against Runway. Further, Runway aspires to use Exhibits C through G for the sole purpose of contesting Plaintiffs' factual allegations and in clear contravention of the Court's obligation at the motion to dismiss stage to "assume that the plaintiff's allegations are true and . . . draw all reasonable inferences in the plaintiff's favor." *Anschutz Corp. v. Merrill Lynch & Co.*, 785 F. Supp. 2d 799, 810 (N.D. Cal. 2011).

One of the papers that Runway seeks to incorporate by reference is only cited once in the FAC. The FAC does describe the other two research papers in more detail, but as examples

which bolster and corroborate the allegations in the FAC as to how the AI models work, rather than as documents which are central and dispositive to the claims (i.e., a contract which is the subject of a breach of contract claim). Therefore, these research papers are not central to the FAC, and in addition, Runway has not explained how the portions of the research papers that Plaintiffs have cited and referred to would somehow be misleading to the Court standing alone. Instead, Runway has attempted to add its own additional facts to Plaintiffs' allegations in the FAC.

Finally, in Exhibits F and G, Runway seeks to incorporate two documents which are also available on websites that Plaintiffs have already included in the FAC (a Stable Diffusion license and webpage depicting a Stable Diffusion model card). To the extent that Runway requests that the Court make particular findings of fact as to content on the website, Runway has provided no satisfactory argument or rationale for the Court to do so. Because the FAC already includes links to the two websites, incorporation by reference is unnecessary.

II. ARGUMENT

In general, courts "may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Pirani v. Netflix, Inc.*, No. 22-CV-02672-JST, 2024 WL 69069, at *6 (N.D. Cal. Feb. 5, 2024) (quoting *United States v. Corinthian Colls.*, 655 F.3d 984, 998 (9th Cir. 2011)). However, two doctrines allow a court to consider material beyond the complaint: incorporation by reference in the complaint and judicial notice under Federal Rule of Evidence 201. *In re Google Assistant Priv. Litig.*, 457 F. Supp. 3d 797, 812 (N.D. Cal. 2020). Regardless, the Ninth Circuit has warned that "[i]f defendants are permitted to present their own version of the facts at the pleading stage—and district courts accept those facts as uncontroverted and true—it becomes near impossible for even the most aggrieved plaintiff to demonstrate a sufficiently 'plausible' claim for relief." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

1. Runway's request for judicial notice of Exhibits A and B is improper.

Runway expressly states that it seeks judicial notice of the *Kadrey* pleadings because "[t]he

court records show how other parties in this District have approached similar issues to this case" Runway RJN at 3. This is plainly an improper reason for the Court to take judicial notice of these documents. "As a general rule, a court may not take judicial notice of proceedings or records in another cause so as to supply, without formal introduction of evidence, facts essential to support a contention in a cause then before it." *M/V Am. Queen v. San Diego Marine Constr. Corp.*, 708 F.2d 1483, 1491 (9th Cir. 1983); *see also Wyatt v. Terhune*, 315 F.3d 1108, 1108 n.5 (9th Cir. 2003) ("Factual findings in one case ordinarily are not admissible for their truth in another case through judicial notice.") (overruled on other grounds).

Runway does not provide any specific argument regarding whether the issues in *Kadrey* are similar to the issues before this Court. Nor does Runway provide any indication of what the Court should take judicial notice *of* in the *Kadrey* pleadings. The Ninth Circuit is clear that a court should not take judicial notice of facts in another case as a way to short-circuit the adjudicative process and introduce facts into the record deemed as true without any further factfinding. *See Khoja*, 899 F.3d at 998-99 ("[T]he unscrupulous use of extrinsic documents to resolve competing theories against the complaint risks premature dismissals of plausible claims that may turn out to be valid after discovery."). Accordingly, Plaintiffs ask the Court to deny Runway's Request for Judicial Notice as to the *Kadrey* pleadings.

2. Runway's request to incorporate Exhibits C, D, E, F, and G by reference improperly seek to raise factual disputes and fails to demonstrate that the Exhibits are central to Plaintiffs' claims.

A. Exhibits C-E.

Incorporating the research papers in Exhibits C through E by reference for the mere purpose of bolstering Runway's factual disputes is contrary to the purpose of the doctrine; to ensure that that a plaintiff cannot circumvent pleading requirements by selectively quoting documents out of context to state a claim when it is clear from undisputable facts that the contract or other document featured in the complaint actually states the opposite of what the Plaintiff alleges. *See Khoja*, 899 F.3d at 1002. Admission of the three research papers would provide a vehicle for the Court to establish the facts that Runway has selected as true, weigh those

facts against the allegations that Plaintiffs have pled in the FAC, and then decide whether to dismiss the claims, all without the benefit of fact discovery. This is not the purpose of the incorporation by reference doctrine and risks "resolving factual disputes at the pleading stage." *Id.* at 1003 ("[I]t is improper to assume the truth of an incorporated document if such assumptions only serve to dispute facts stated in a well-pleaded complaint."); *see also Sgro v. Danone Waters of N. Am., Inc.*, 532 F.3d 940, 942, n.1 (9th Cir. 2008) (finding it proper to consider disability benefits plan referenced in complaint, but declining to accept truth of the plan's contents where the parties disputed whether defendant actually implemented the plan according to its terms). Finally, the FAC includes a hyperlink to each of the three papers, such that the allegations regarding the papers are not misleading or otherwise incomplete.

Further, contrary to Runway's assertions, the FAC does not cite extensively to the three research papers that Runways seeks to incorporate. Neither are these papers central or dispositive to the claims set forth in the FAC. The Webster paper (Ex. D), which Runway seeks to incorporate by reference in its entirety is referred to only once by the FAC. FAC at ¶ 138. *See Khoja*, 899 F.3d at 1003 (stating that where a document was quoted once in a two-sentence footnote, incorporation by reference was improper because "[f]or 'extensively' to mean anything under *Ritchie*, it should, ordinarily at least, mean more than once") (quoting *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010)).

Likewise, as to Ex. E, the FAC briefly discusses the Casper paper to describe how researchers analyzed the ability of diffusion models to classify art from named artists and showed that Stable Diffusion was "exceptionally good at creating convincing images resembling the work of specific artists if the artist's name is provided in the prompt." FAC ¶¶ 141-43, 146. The Carlini paper is cited more frequently, but is included in the FAC for the same reasons as the other two: to bolster the allegations as to how the Stable Diffusion models functions. None of the papers serve as documentary evidence central to a claim. Finally, the FAC also includes a hyperlink to all

three research papers. Therefore, there is nothing left for the Court to incorporate.

B. Exhibits F and G.

Runway also requests that the Court incorporate two additional documents made available on websites. Runway RJN at 4; Exs. F, G; FAC ¶¶ 352, 355, 368. Again, because the websites that Runway seeks to incorporate are already included in the FAC, there is no need for the Court to incorporate them by reference with regard to specific factual findings as to the contents of the website. In addition, it is clear that incorporation by reference is not proper.

To the extent that Runway wants the Court to make particular findings of fact as to content within those websites, Runway has provided no argument or rationale for the Court to do so other than a cite to cases for the proposition that the court should consider the content on the website that it cites. *See* RJN at 4-5, (citing *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1058 n.10 (9th Cir. 2014)); *see Mophie, Inc. v. Shah*, No. CV 13-1321-DMGJEMX, 2014 WL 10988339, at *3 n.2 (C.D. Cal. July 24, 2014) (considering policy described on website where complaint relied on same website). The Court however, can already do so based on the link to the website provided in the FAC.

Further, Runway can only point to three paragraphs in the FAC in which these documents are mentioned. FAC ¶¶ 352, 355, 368. The FAC also merely references Exhibit G as an example where Runway has distributed Stable Diffusion 1.5 and where the public can download, use, and deploy Stable Diffusion 1.5. *Cf. Coto Settlement*, 593 F.3d at 1038 (incorporating a billing agreement despite not explicitly being referred to because "the Billing Agreement is integral to the Amended Complaint"), with *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (holding that the plaintiff's petition for return of property in a forfeiture claim was not incorporated because it was neither "reference[d] extensively" nor "integral to [her] claim"). Exhibit G is merely an example of Runway's alleged violations and so references to Exhibit G in paragraphs 352 and 355 are not central to Plaintiffs' claims.[1] Accordingly, the Court should deny

[1] Further, the website content on this third-party web page was curated and authored by Defendants' researchers. This information is partial because it was written by individuals from named defendants in this lawsuit. *Rollins v. Dignity Health*, 338 F. Supp. 3d 1025, 1032 (N.D. Cal.

Runway's request for incorporation by reference.

III. CONCLUSION

For the foregoing reasons, the Court should deny Runway's Request for Judicial Notice and Incorporation by Reference in Support of Defendant Runway AI, Inc.'s Motion to Dismiss Plaintiffs' First Amended Complaint.

2018) ("[C]ourts should be cautious before taking judicial notice of documents simply because they were published on a website" particularly "when a party seeks to introduce documents it created and posted on its own website.").

Dated: March 21, 2024

Respectfully Submitted,

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