

1 COOLEY LLP  
 ANGELA L. DUNNING (212047)  
 2 adunning@cooley.com  
 J. ASHETON LEMAY (*pro hac vice*)  
 3 alemay@cooley.com  
 KAYLA BLAKER (*pro hac vice*)  
 4 kblaker@cooley.com  
 3175 Hanover Street  
 5 Palo Alto, California 94304-1130  
 Telephone: (650) 843-5000  
 6 Facsimile: (650) 849-7400

7 JUDD D. LAUTER (290945)  
 jlauter@cooley.com  
 8 3 Embarcadero Center, 20<sup>th</sup> Floor  
 San Francisco, California 94111  
 9 Telephone: (415) 693-2000  
 Facsimile: (415) 693-2222

10 *Counsel for Defendant Midjourney, Inc.*

11  
 12 **UNITED STATES DISTRICT COURT**  
 13 **NORTHERN DISTRICT OF CALIFORNIA**  
 14 **SAN FRANCISCO DIVISION**

15  
 16 SARAH ANDERSEN, an individual;  
 KELLY MCKERNAN, an individual;  
 17 KARLA ORTIZ, an individual,  
 18 Individual and Representative Plaintiffs,  
 19 v.  
 20 STABILITY AI LTD., a UK corporation;  
 STABILITY AI, INC., a Delaware  
 21 corporation; MIDJOURNEY, INC., a  
 Delaware corporation; DEVIANTART, INC.,  
 22 a Delaware corporation,  
 23 Defendants.

Case No. 3:23-cv-00201-WHO  
**DEFENDANT MIDJOURNEY, INC.’S NOTICE  
 OF JOINDER IN DEFENDANT DEVIANTART,  
 INC.’S SPECIAL MOTION TO STRIKE  
 UNDER CALIFORNIA CODE OF CIVIL  
 PROCEDURE § 425.16**

Date: July 19, 2023  
 Time: 2:00 p.m.  
 Courtroom: 2, 17th Floor  
 Judge: William H. Orrick

Trial Date: None  
 Date Action Filed: January 13, 2023

1 **NOTICE OF JOINDER AND JOINDER TO ANTI-SLAPP MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **NOTICE IS HEREBY GIVEN** that Defendant Midjourney, Inc. (“Midjourney”) hereby  
4 joins in DeviantArt, Inc.’s (“DeviantArt”) Special Motion to Strike Under California Code of Civil  
5 Procedure § 425.16 (“Motion”) (Dkt. 50).

6 Midjourney joins in DeviantArt’s Motion and all supporting papers submitted therewith,  
7 for all the reasons stated therein, namely, that Plaintiffs’ cannot demonstrate a probability of  
8 prevailing on their speech-inhibiting right of publicity claims because the claims: (1) fall within the  
9 subject matter of copyright, are predicated on assertions of rights that are equivalent to copyright  
10 rights, and are therefore preempted under 17 U.S.C. § 301; (2) are based exclusively on conclusory  
11 allegations; (3) would improperly expand the concept of publicity rights to prohibit use of an  
12 individual’s name to accurately refer to that individual’s public acts or achievements—in this case,  
13 the “artistic styles” that Plaintiffs claim they “popularized” on the internet (§ 205); and (4) are  
14 predicated on, if anything, transformative uses of Plaintiffs’ identities or likenesses, which are  
15 protected First Amendment speech, particularly inasmuch as Plaintiffs, themselves, allege that it is  
16 nearly “impossible” to identify any alleged Work of Plaintiffs from the face of any output from  
17 defendants’ platforms. (§§ 192–93.)

18 By way of this joinder, Midjourney requests that the Court grant the Motion and strike  
19 Plaintiffs’ right-of-publicity claims against Midjourney.

20  
21 Dated: April 18, 2023

COOLEY LLP

22  
23 By: /s/ Angela L. Dunning

24 Angela L. Dunning  
25 Judd Lauter  
26 Kayla Blaker  
27 Asheton Lemay

28 Attorneys for Defendant  
MIDJOURNEY, INC.