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

18 SARAH ANDERSEN, et al.,
 19 Individual and Representative Plaintiffs,
 20 v.
 21 STABILITY AI LTD., et al.,
 22 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..... 1

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 Improperly Seek to Raise Factual Disputes and Fails to Demonstrate that The
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1 **I. INTRODUCTION**

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

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

26 One of the papers that Runway seeks to incorporate by reference is only cited once in the
27 FAC. The FAC does describe the other two research papers in more detail, but as examples
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1 which bolster and corroborate the allegations in the FAC as to how the AI models work, rather
2 than as documents which are central and dispositive to the claims (i.e., a contract which is the
3 subject of a breach of contract claim). Therefore, these research papers are not central to the
4 FAC, and in addition, Runway has not explained how the portions of the research papers that
5 Plaintiffs have cited and referred to would somehow be misleading to the Court standing alone.
6 Instead, Runway has attempted to add its own additional facts to Plaintiffs' allegations in the
7 FAC.

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

14 II. ARGUMENT

15 In general, courts “may not consider any material beyond the pleadings in ruling on a Rule
16 12(b)(6) motion.” *Pirani v. Netflix, Inc.*, No. 22-CV-02672-JST, 2024 WL 69069, at *6 (N.D. Cal.
17 Feb. 5, 2024) (quoting *United States v. Corinthian Colls.*, 655 F.3d 984, 998 (9th Cir. 2011)).
18 However, two doctrines allow a court to consider material beyond the complaint: incorporation by
19 reference in the complaint and judicial notice under Federal Rule of Evidence 201. *In re Google*
20 *Assistant Priv. Litig.*, 457 F. Supp. 3d 797, 812 (N.D. Cal. 2020). Regardless, the Ninth Circuit has
21 warned that “[i]f defendants are permitted to present their own version of the facts at the
22 pleading stage—and district courts accept those facts as uncontroverted and true—it becomes
23 near impossible for even the most aggrieved plaintiff to demonstrate a sufficiently ‘plausible’
24 claim for relief.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) (quoting
25 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

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

27 Runway expressly states that it seeks judicial notice of the *Kadrey* pleadings because “[t]he
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1 court records show how other parties in this District have approached similar issues to this case”
2 Runway RJN at 3. This is plainly an improper reason for the Court to take judicial notice of these
3 documents. “As a general rule, a court may not take judicial notice of proceedings or records in
4 another cause so as to supply, without formal introduction of evidence, facts essential to support a
5 contention in a cause then before it.” *M/V Am. Queen v. San Diego Marine Constr. Corp.*, 708 F.2d
6 1483, 1491 (9th Cir. 1983); *see also Wyatt v. Terhune*, 315 F.3d 1108, 1108 n.5 (9th Cir. 2003)
7 (“Factual findings in one case ordinarily are not admissible for their truth in another case through
8 judicial notice.”) (overruled on other grounds).

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

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

21 **A. Exhibits C-E.**

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

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

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

19 Likewise, as to Ex. E, the FAC briefly discusses the Casper paper to describe how
20 researchers analyzed the ability of diffusion models to classify art from named artists and showed
21 that Stable Diffusion was “exceptionally good at creating convincing images resembling the work
22 of specific artists if the artist’s name is provided in the prompt.” FAC ¶¶ 141-43, 146. The Carlini
23 paper is cited more frequently, but is included in the FAC for the same reasons as the other two:
24 to bolster the allegations as to how the Stable Diffusion models functions. None of the papers
25 serve as documentary evidence central to a claim. Finally, the FAC also includes a hyperlink to all
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1 three research papers. Therefore, there is nothing left for the Court to incorporate.

2 **B. Exhibits F and G.**

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

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

16 Further, Runway can only point to three paragraphs in the FAC in which these documents
17 are mentioned. FAC ¶¶ 352, 355, 368. The FAC also merely references Exhibit G as an example
18 where Runway has distributed Stable Diffusion 1.5 and where the public can download, use, and
19 deploy Stable Diffusion 1.5. *Cf. Coto Settlement*, 593 F.3d at 1038 (incorporating a billing
20 agreement despite not explicitly being referred to because “the Billing Agreement is integral to
21 the Amended Complaint”), with *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)
22 (holding that the plaintiff’s petition for return of property in a forfeiture claim was not
23 incorporated because it was neither “reference[d] extensively” nor “integral to [her] claim”).
24 Exhibit G is merely an example of Runway’s alleged violations and so references to Exhibit G in
25 paragraphs 352 and 355 are not central to Plaintiffs’ claims.¹ Accordingly, the Court should deny
26

27 ¹ Further, the website content on this third-party web page was curated and authored by
28 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.

1 Runway’s request for incorporation by reference.

2 **III. CONCLUSION**

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

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28 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.”).

1 Dated: March 21, 2024

Respectfully Submitted,

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