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Midjourney, Inc.

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**
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16 SARAH ANDERSEN, et al.,
17 **Plaintiffs,**
18 **v.**
19 STABILITY AI LTD., a UK corporation;
20 STABILITY AI, INC., a Delaware
corporation; DEVIANTART, Inc., a Delaware
21 corporation; MIDJOURNEY, INC., a
Delaware corporation; RUNWAY AI, INC.,
22 a Delaware corporation,
23 **Defendants.**

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

**DEFENDANT MIDJOURNEY, INC'S REPLY IN
SUPPORT OF ADMINISTRATIVE MOTION FOR
CLARIFICATION [ECF 225]**

Before: Hon. William H. Orrick

1 Defendant Midjourney, Inc. (“Midjourney”) submits this brief reply in support of its Motion
2 for Clarification (ECF No. 225; the “Motion”) of the Court’s Order Granting in Part Midjourney’s
3 Motion to Dismiss (ECF No. 223; the “Order”) in order to correct the record and address certain
4 allegations in plaintiffs’ Opposition to the Motion. (ECF No. 225; the “Opposition”).

5 As an initial matter, the Motion does not violate Local Rule 7-11(a). The portion of the
6 Motion constituting an administrative motion for clarification runs less than four pages, well within
7 the limits set by the Local Rule. (*See* Motion at 1-4.) And the Motion asked the Court to clarify
8 its Order – something no stipulation or meet and confer between the parties could achieve. *See*
9 *Hansen v. Levy et al.*, Case No. 3:17-cv-03473-WHO, Dkt. No. 138 (N.D. Cal. Oct. 5, 2018)
10 (Orrick, J.) (granting clarification in response to admin. motion (Dkt. No. 137) without declaration
11 re: stipulation).

12 It is notable that plaintiffs do not address the substance of Midjourney’s request for
13 clarification, nor do they provide any argument as to why the clarification sought is inappropriate
14 or unwarranted. Instead, they puzzlingly accuse Midjourney of “seek[ing] to reassert the same
15 arguments it made in its motion to dismiss.” (Opposition at 3.) Plaintiffs are mistaken. Midjourney
16 seeks clarification of the Order, which it of course could not have done before the Order issued.

17 Indeed, plaintiffs spend the bulk of their argument in the Opposition improperly arguing the
18 Motion’s request, in the alternative, for leave to file a motion to seek reconsideration. (Opposition
19 at 3-5.) Under Local Rule 7-9(d), “no response need be filed” to such a motion unless the Court
20 “decides to order the filing of additional papers.” Midjourney will not respond to these arguments
21 unless and until the Court grants or requests additional briefing on Midjourney’s request for leave
22 to file a motion for reconsideration.

23 Plaintiffs’ Opposition demonstrates that plaintiffs have no response to the substance of
24 Midjourney’s request, and no explanation for why clarification would not be warranted here.
25 Midjourney respectfully requests the Court to grant its Motion and clarify the Order to clarify the
26 concrete elements of plaintiffs’ trade dress.

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Dated: September 12, 2024

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