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24 **UNITED STATES DISTRICT COURT**  
25 **NORTHERN DISTRICT OF CALIFORNIA**  
26 **SAN FRANCISCO DIVISION**

27 Sarah Andersen, et al.,  
28 *Individual and Representative Plaintiffs,*  
v.  
Stability AI Ltd., a UK corporation, et al.,  
*Defendants.*

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

**PLAINTIFFS' NOTICE OF VOLUNTARY  
DISMISSAL WITH PREJUDICE  
PURSUANT TO FED. R. CIV. P.  
41(a)(1)(A)(i)**

1 The Court’s Order on Motions to Dismiss First Amended Complaint (“Order”) dismissed  
2 claims brought by Plaintiffs Kelly McKernan and H. Southworth (the “DMCA Plaintiffs”) under  
3 the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1202(b). ECF No. 223 at 11-13.  
4 The Court adopted Judge Tigar’s holding in *Doe 1 v. GitHub, Inc.*, No 22-cv-06823-JST, 2024  
5 235217, at \*8 (N.D. Cal. Jan. 22, 2024), that DMCA § 1202(b) claims require “identity”  
6 between original works and copies from which copyright management information is removed.  
7 Judge Tigar has since certified this “identity” requirement for interlocutory appeal. *See Doe 1 v.*  
8 *GitHub, Inc.*, No. 22-cv-06823-JST, 2024 WL 4336532 (N.D. Cal. Sep. 27, 2024).

9 The Court’s Order also granted Plaintiffs leave to file a Second Amended Complaint  
10 (“SAC”) adding new plaintiffs. ECF No. 223 at 8. In the Joint Case Management Statement and  
11 Rule 26(f) Report (“Joint Statement”), Plaintiffs confirmed their intent to file a SAC, representing  
12 that they would make no substantive changes inviting additional Rule 12 challenges. *See id.* They  
13 also indicated their intention to preserve the DMCA Plaintiffs’ right to seek reconsideration of their  
14 dismissed claims should the Ninth Circuit find no “identity” requirement in Section 1202(b).  
15 ECF 235 at 8-9.

16 Standard procedure allows parties to seek reconsideration of dismissed claims after a  
17 material change in law. Here, however, compliance with the Court’s Order required filing a SAC  
18 without the DMCA Plaintiffs—potentially compromising their right to seek reconsideration after a  
19 favorable Ninth Circuit ruling on the “identity” requirement. To protect this right, Plaintiffs  
20 initially included the DMCA Plaintiffs in the SAC.

21 Defendants have agreed not to challenge future reconsideration of DMCA claims based on  
22 their omission from the SAC, while preserving all other grounds for opposition. ECF No. 235 ¶ 5.  
23 Based on this agreement, and pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), Plaintiffs and the proposed  
24 class now voluntarily dismiss with prejudice all DMCA claims (Counts Three, Six, and Eleven)  
25 from the Second Amended Complaint. ECF No. 238. Plaintiffs Kelly McKernan and H.  
26 Southworth pka Hawke Southworth accordingly withdraw from this action.

1 Dated: November 21, 2024

Respectfully submitted,

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