

1 Mark A. Lemley (State Bar No. 155830)
2 **LEX LUMINA PLLC**
3 745 Fifth Avenue, Suite 500
4 New York, NY 10151
5 Telephone: (646) 898-2055
6 Facsimile: (646) 906-8657
7 Email: mlemley@lex-lumina.com

8 Nicole M. Jantzi (*pro hac vice*)
9 Paul M. Schoenhard (*pro hac vice*)
10 **FRIED, FRANK, HARRIS, SHRIVER**
11 **& JACOBSON LLP**
12 801 17th Street NW
13 Washington, DC 20006
14 Telephone: (202) 639-7254
15 Email: nicole.jantzi@friedfrank.com
16 paul.schoenhard@friedfrank.com

17 (Additional counsel on signature page)

18 ***Counsel for Defendant Stability, Ltd.***
19 ***and Stability AI, Inc.***

20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**
22 **SAN FRANCISCO DIVISION**

23 SARAH ANDERSEN, an individual;
24 KELLY MCKERNAN, an individual;
25 KARLA ORTIZ, an individual,

26 Individual and Representative Plaintiffs,

27 v.

28 STABILITY AI LTD., a UK corporation;
STABILITY AI, INC., a Delaware
corporation; MIDJOURNEY, INC., a
Delaware corporation; DEVIANTART,
INC., a Delaware corporation,

Defendants.

CASE NO. 23-cv-00201-WHO

**DEFENDANT STABILITY AI, LTD. AND
STABILITY AI, 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.
Place: Courtroom 2 - 17th Floor
Before: Hon. William H. Orrick

Trial Date: TBD
Date Action Filed: January 13, 2023

NOTICE OF JOINDER AND JOINDER TO ANTI-SLAPP MOTION

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

2 **NOTICE IS HEREBY GIVEN** that Defendants Stability AI, Ltd., and Stability AI, Inc.
3 (“Stability Defendants”) hereby join in DeviantArt, Inc.’s (“DeviantArt”) Special Motion to Strike
4 Under California Code of Civil Procedure § 425.16 (“Motion”) (Dkt. 50).

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

17 By way of this joinder, the Stability Defendants request that the Court grant the Motion
18 and strike Plaintiffs’ right-of-publicity claims against the Stability Defendants.

19
20 Dated: April 18, 2023

Respectfully submitted,

21 By: /s/ Paul M. Schoenhard

22 Mark A. Lemley (State Bar No. 155830)
23 **LEX LUMINA PLLC**
24 745 Fifth Avenue, Suite 500
25 New York, NY 10151
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& JACOBSON LLP**

801 17th Street NW
Washington, DC 20006
Telephone: (202) 639-7254
Email: nicole.jantzi@friedfrank.com
paul.schoenhard@friedfrank.com

Michael C. Keats (*pro hac vice*)
Amir R. Ghavi (*pro hac vice*)

**FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON LLP**

One New York Plaza
New York, NY 10004
Telephone: (212) 859-8000
Email: michael.keats@friedfrank.com
amir.ghavi@friedfrank.com

*Counsel for Defendant Stability AI, Ltd. and
Stability AI, Inc.*