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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION
15

16 JINGNA ZHANG, an individual; SARAH)
ANDERSEN, an individual; HOPE LARSON, an)
17 individual; and JESSICA FINK, an individual,)
18 Individual and Representative)
Plaintiffs,)
19 v.)
20 GOOGLE LLC and ALPHABET INC.,)
21 Defendants.)
22)
23)

CASE NO.: 5:24-cv-02531-EJD
**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE AND
CONSIDERATION OF MATERIALS
INCORPORATED BY REFERENCE
IN SUPPORT OF MOTION TO
DISMISS COMPLAINT**

Judge: Hon. Edward J. Davila

1 In considering Defendants Google LLC and Alphabet Inc.’s (collectively, “Defendants”)
2 motion to dismiss, Defendants hereby request that the Court take judicial notice of, and/or order
3 incorporated by reference, the documents listed below:

- 4 1. A certified Certificate of Registration for U.S. Copyright No. TX 9-082-399,
5 titled “Adulthood is a Myth: A ‘Sarah’s Scribbles’ 2021 Wall Calendar.” This
6 document is attached hereto as **Exhibit 1** to the Declaration of Qifan Huang in
7 Support of Defendants’ Request for Judicial Notice (“Huang Declaration”).
- 8 2. A certified Certificate of Registration for U.S. Copyright No. TX 8-207-926,
9 titled “Adulthood Is a Myth: A Sarah’s Scribbles Collection.” This document is
10 attached hereto as **Exhibit 2** to the Huang Declaration.
- 11 3. A certified Certificate of Registration for U.S. Copyright No. TX 8-564-573,
12 titled “Herding Cats: A Sarah’s Scribbles Collection.” This document is attached
13 hereto as **Exhibit 3** to the Huang Declaration.
- 14 4. A post from Plaintiff Sarah Andersen’s X (formerly, Twitter) account, posted on
15 December 23, 2015. Attached as **Exhibit 4** to the Huang Declaration, this
16 document is publicly available online at
17 <https://x.com/SarahCAndersen/status/679691764836515844>.
- 18 5. A post from Plaintiff Sarah Andersen’s X account, posted on February 3, 2016.
19 Attached as **Exhibit 5** to the Huang Declaration, this document is publicly
20 available online at <https://x.com/SarahCAndersen/status/694905848053809153>.
- 21 6. A post from Plaintiff Sarah Andersen’s X account, posted on October 24, 2020.
22 Attached as **Exhibit 6** to the Huang Declaration, this document is publicly
23 available online at <https://x.com/SarahCAndersen/status/1320010279103627265>.
- 24 7. A certified deposit copy for U.S. Copyright No. TX 6-879-805, titled “Chiggers.”
25 This document is attached hereto as **Exhibit 7** to the Huang Declaration.

26 As set forth below, the Court may take judicial notice of these documents under Fed. R.
27 Evid. 201, and may properly consider them on Defendants’ motion to dismiss.

28

1 **DISCUSSION**

2 On a motion to dismiss, the Court may consider materials that are judicially noticeable.
3 *See, e.g., In re Facebook, Inc. Secs. Litig.*, 477 F. Supp. 3d 980, 1008 (N.D. Cal. 2020) (Davila,
4 J.). Separately, under the incorporation-by-reference doctrine, on a motion to dismiss “a court
5 may consider a writing referenced in a complaint but not explicitly incorporated therein if the
6 complaint relies on the document and its authenticity is unquestioned.” *Swartz v. KPMG LLP*,
7 476 F.3d 756, 763 (9th Cir. 2007). The doctrine extends to situations where a plaintiff’s claim
8 “depends on the contents of a document,” even when “the plaintiff does not explicitly allege the
9 contents of that document in the complaint.” *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir.
10 2005).

11 **Exhibits 1–3**, certified Certificates of Registration for Plaintiffs’ works at issue, and
12 **Exhibit 7**, certified deposit copy for Plaintiff Hope Larson’s work “Chiggers,” may be
13 considered on both grounds. Certified records from the U.S. Copyright Office or the Library of
14 Congress, such as certificates of registration and deposit copies of registered copyrights that were
15 submitted pursuant to 17 U.S.C. § 407(a), are judicially noticeable. *See, e.g., Oroamerica Inc. v.*
16 *D & W Jewelry Co.*, 10 F. App’x 516, 517 n.4 (9th Cir. 2001) (certificates of registration); *Jim*
17 *Marshall Photography, LLC v. John Varvatos of California*, 2013 WL 3339048, at *3 n.5 (N.D.
18 Cal. June 28, 2013) (same); *UAB “Planner5D” v. Facebook, Inc.*, 2020 WL 4260733, at *6 n.5
19 (N.D. Cal. July 24, 2020) (deposit copy of work at issue); *Newt v. Twentieth Century Fox Film*
20 *Corp.*, 2016 WL 4059691, at *2-3 (C.D. Cal. July 27, 2016) (same). Exhibits 1 to 3 are certified
21 Certificates of Registration obtained from the U.S. Copyright Office and bear the Copyright
22 Office’s certification. Similarly, Exhibit 7 is a certified deposit copy of the work “Chiggers”
23 obtained from the Library of Congress and bears the Library’s seal. Defendants thus respectfully
24 request that the Court take judicial notice of these documents and consider them in connection
25 with Defendants’ motion to dismiss.

26 Moreover, Exhibits A and B to the Complaint expressly refer to the copyright
27 registrations for the works at issue, including their copyright registration numbers. *See* ECF No.
28 1-1 at 3, 7–8, 10; ECF No. 1-2 at 3, 15–16, 19. Plaintiffs allege that Defendants infringed upon

1 the copyrights covered by these registrations. *See* ECF No. 1, Compl. ¶¶ 15–16; ECF No. 1-2 at
 2 3, 15–16, 19. Thus, the Certificates of Registration attached hereto as Exhibits 1 to 3 and the
 3 deposit copy attached hereto as Exhibit 7 are also incorporated by reference.

4 **Exhibits 4–6**, posts on the social media website X, are judicially noticeable, because they
 5 appear on “publicly accessible websites whose accuracy and authenticity are not subject to
 6 dispute.” *In re Facebook, Inc. Secs. Litig.*, 477 F. Supp. 3d at 1008. Courts within this District
 7 routinely take judicial notice of social media posts by parties, including posts from X, formerly
 8 known as Twitter. *See, e.g., Veronica Foods Co. v. Ecklin*, 2017 WL 2806706, at *4 (N.D. Cal.
 9 June 29, 2017); *Shankar v. Zymergen Inc.*, 2022 WL 17259057, at *1 (N.D. Cal. Nov. 29, 2022);
 10 *Unsworth v. Musk*, 2019 WL 5550060, at *4 (N.D. Cal. Oct. 28, 2019); *Rock the Vote v. Trump*,
 11 2020 WL 6342927, at *3 (N.D. Cal. Oct. 29, 2020). Here, Defendants respectfully request that
 12 this Court take judicial notice of three posts on X from Plaintiff Sarah Andersen’s official,
 13 verified X account. *See* Exs. 4–6. Defendants seek judicial notice of these materials for the fact
 14 that Plaintiff Sarah Andersen publicly shared the content of these posts on the date reflected in
 15 those posts. *See, e.g., Unsworth*, 2019 WL 5550060, at *4; *Rock the Vote*, 2020 WL 6342927, at
 16 *3.

17 For these reasons, Defendants respectfully request that the Court consider the above-
 18 referenced documents in connection with Defendants’ Motion to Dismiss Plaintiffs’ Complaint.

20 Respectfully submitted,

21 Dated: June 20, 2024

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