UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

REDDIT, INC.,	Case No. 25-cv-8736 (PAE)
Plaintiff,	
v.	ORAL ARGUMENT REQUESTED
SERPAPI LLC, OXYLABS UAB, AWMPROXY, and PERPLEXITY AI, INC.	
Defendants.	

<u>MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT PERPLEXITY AI, INC.'S MOTION TO DISMISS</u>

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I.   INTRODUCTION

Plaintiff Reddit, Inc. ("Reddit") asserts a claim against Defendant Perplexity AI, Inc. ("Perplexity") under Section 1201 of the Digital Millennium Copyright Act ("DMCA") that is novel and untenable.

The gravamen of Reddit's complaint is that the *other* Defendants (not Perplexity) improperly collected *public Google search-result pages*—materials that any internet user can freely access without restriction—and *then* provided those materials to Perplexity. The sheer number of steps from Reddit's users creating posts to Perplexity allegedly receiving information related to them is remarkable: (1) Reddit's users author posts to which *they* (not Reddit) allegedly own a copyright; then (2) Reddit receives a *non-exclusive* license to the posts from the users and publishes those posts on its free, public website; then (3) Google indexes them and publishes search engine result pages that excerpt their content on *its* free, public website (i.e., what one typically sees in a Google search landing page); then (4) other Defendants supposedly evade a Google (not Reddit) "access control" called SearchGuard and "scrape" those search-result pages; and (5) finally, Perplexity allegedly receives the publicly-available search-result pages from one of the other Defendants, SerpApi. Even taking this alleged daisy-chain framework at face value, Reddit fails to state a Section 1201 claim against Perplexity on two separate grounds, either of which is sufficient to doom its claim. First, Perplexity sits downstream of any alleged circumvention and therefore cannot be liable under Section 1201(a)(1)(A). There is no secondary liability under Section 1201. It applies only to those who actually "circumvented" an access control themselves, not to others who subsequently received accessed materials. The complaint fails to allege that Perplexity *itself* engaged in any circumvention, and that defect alone is fatal.

The second, independent reason why Reddit fails to state a claim under Section 1201 is that it fails to allege that any of the Defendants circumvented a "technological measure that effectively controls access"—such that liability could arise under Section 1201—because Google's SearchGuard, as pleaded, is not the type of digital lock that the DMCA prohibits

circumventing. By Reddit's own account, SearchGuard allegedly aims to prevent one particular *type* of search-results access (large-scale, automated copying), while leaving the actual search results freely and publicly accessible through an ordinary Google query. That means two separate links in the attenuated chain of liability from Reddit to Perplexity are legally defective: the link between Google and the other Defendants (because SearchGuard is not a "technological measure that effectively controls access"), and the link between SerpApi and Perplexity (because Perplexity itself is not alleged to have "circumvented" *anything*).

Nor can Reddit cure these defects by repackaging its failed DMCA claim into state-law claims. Courts have consistently dismissed unjust enrichment, unfair competition, and civil conspiracy claims as preempted by the Copyright Act when those claims are not qualitatively different from a claim under the Act. At their core, Reddit's state-law claims seek to protect the same rights as those under the Copyright Act—to control the reproduction, adaptation, and distribution of its users' content (although Reddit itself holds only a non-exclusive license to that content)—and are therefore preempted. And even if not preempted, the state-law claims independently fail because Reddit fails to plausibly allege the necessary elements underlying them. The Court should thus dismiss the claims against Perplexity in their entirety. And because the issues with Reddit's claims are structural and cannot be remedied by pleading additional facts, it should do so without leave to amend.

II.   BACKGROUND

A.   Perplexity's answer engine draws on publicly available information to provide comprehensive summaries with source citations.

Perplexity is an AI company dedicated to making knowledge accessible and useful for everyone. Perplexity builds tools, including its signature answer engine search tool, that help people quickly find information on the internet and accomplish tasks more efficiently.

Perplexity does not produce pages of webpage links like a traditional search engine. Instead, Perplexity's answer engine uses a technique called Retrieval Augmented Generation ("RAG"). *See* Compl. ¶¶ 65–67, ECF No. 1. RAG technology indexes publicly available content

on the internet, uses a third-party large language model to analyze that data in response to user queries, and then delivers users a comprehensive, conversational summary with prominent source citations and links. *See id.*

B.   Reddit alleges that the other co-defendants engaged in large-scale, automated collection of Google search results.

Reddit alleges that it is "one of the Internet's largest bodies of knowledge and information, with billions of posts and comments." Compl. ¶ 2. The authors and owners of those posts are Reddit's users—not Reddit—and Reddit holds only a non-exclusive, limited license to them. *Id.* ¶ 45 n.17. Reddit makes its users' posts "publicly available on the Reddit platform." *Id.* ¶ 46 n.21. Reddit's complaint describes a range of purported policies and technical practices it uses to regulate the use of its site, such as IP-rate limits, captcha bot-detection tools, and prohibitions in its terms of use against "scraping."[1] *See id.* ¶ 48. But these allegations are irrelevant to Reddit's claims, because Reddit does not allege that *any* defendant interacted with Reddit's systems in a manner that triggered, confronted, or otherwise circumvented those practices. Indeed, Reddit does not allege that any defendant obtained content directly from Reddit *at all*.

Instead, Reddit alleges only that Perplexity's co-defendants "scraped" *Google's* search engine results pages ("SERPs"). *See id.* ¶¶ 49, 54, 63. SERPs are the search results and accompanying links that appear publicly whenever a user enters a query into Google's search engine. *See id.* Reddit alleges that Defendants SerpApi LLC ("SerpApi"), Oxylabs UAB, and AWMProxy (collectively, "the other co-defendants") collected public Google SERPs that contained embedded snippets of Reddit content. *See id.* ¶¶ 5, 53, 57. Reddit's claims thus focus on a *Google* technology, called "SearchGuard," which allegedly is intended to prevent users from engaging in high-volume, automated copying of Google's search results, but which allows individual, human users to freely retrieve those publicly available results. *Id.* ¶¶ 49, 95, 97.

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[1] For the purposes of this motion, "scraping" is defined by the complaint as "an automated process for copying content from a website using web crawlers or 'bots.'" *Id.* ¶ 47 n.22.

SearchGuard allegedly does this "by imposing a barrier challenge that cannot be solved in the ordinary course by automated systems." *Id.* ¶ 49.

According to Reddit, the other co-defendants employed techniques to make it seem like their search queries were from individual users (e.g., by varying IP addresses, adjusting header information, or pacing the timing of requests), and thereby reduced the likelihood of triggering SearchGuard's automated-traffic filters. *See id.* ¶¶ 52–64. As alleged, these methods did not unlock any restricted material that was otherwise inaccessible to the public; rather, they allowed the other co-defendants to collect the same public search results that any individual user could obtain from Google, albeit "in bulk." *See id.* ¶¶ 58, 60, 70.

C.   Reddit does not allege that Perplexity "scraped" any data.

The complaint alleges the following lengthy and attenuated chain between its users' posts and Perplexity:

Reddit users → Reddit → Google → Other Co-Defendants → Perplexity

The specific allegations in the complaint focus almost entirely on the links between Reddit and Google (i.e., how Google allegedly generates SERPs of Reddit content) and between Google and the other co-defendants (i.e., how the other co-defendants allegedly collect SERPs from Google).

The complaint makes only two conclusory allegations attempting to connect Perplexity to any of this. First, Reddit alleges that Perplexity "purchased and/or utilized" an unspecified SerpApi "service[] or product[]" at some unspecified time for the acquisition of some undefined set of data. *See id*. ¶¶ 76, 96. But it does not allege *when* any agreement was formed, *what* its terms were, *what* Perplexity allegedly purchased, or *how* any such arrangement supposedly operated.

Second, Reddit alleges a single instance in which it created a "test post" containing unspecified content that "could only be crawled by Google's search engine" and that later appeared in Perplexity's "answer engine." *Id.* ¶ 71. But Reddit fails to allege, at any level of detail, any facts about what content the test post contained, how or why it was unique or

identifiable, how it flowed to Perplexity, why it must have necessarily flowed through one of the co-defendants, or even why Reddit believes it was "scraped" from Google in the first place (rather than taking one of the infinite other potential paths on the Internet from Google to Perplexity, including through any of the numerous other publicly available search engines, such as Bing).

Thus, rather than asserting that *Perplexity* breached any technological access control operated by *Reddit* to protect any content that *Reddit* owns, Reddit's alleged theory is instead as follows: First, individual Reddit users write posts on Reddit's platform and license them to Reddit. Second, Reddit makes those posts publicly available for free on the Internet. Third, Google then indexes *snippets* of those Reddit posts in its SERPs, which are also publicly available for free. Fourth, one or more of the *other co-defendants* allegedly collects and copies via automated processes those public Google SERPs, some of which contain snippets of Reddit-user posts. Fifth, SerpApi then purportedly provides the Google SERPs it collected to Perplexity, which then allegedly uses those SERPs in its own search engine by summarizing them and providing citations *that link back to the original Reddit posts*. Perplexity appears only at the far *end* of this multi-step chain and is never alleged to have participated in—or even observed—any of the conduct in the prior links.

III.   LEGAL STANDARD

"[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "[C]onclusory allegations or legal conclusions masquerading as fact[s]" do not suffice. *Arcesium, LLC v. Advent Software, Inc.*, 2021 WL 1225446, at *5 (S.D.N.Y. Mar. 31, 2021).

IV.   ARGUMENT

Perplexity moves to dismiss each of Reddit's four claims against it. Count 1, for violation of Section 1201(a)(1)(A), fails for two distinct reasons: first, because Reddit does not allege that Perplexity itself engaged in any circumvention, and second, because Google's SearchGuard is not a "technological measure that effectively controls access to a work." Counts 4, 5, and 6—for

unjust enrichment, unfair competition, and civil conspiracy—fail because, as courts consistently hold, they are preempted by the Copyright Act.[2] Furthermore, those state-law claims independently fail on their merits for reasons specific to each claim.

A. Reddit fails to state a DMCA claim against Perplexity.

Section 1201 of the DMCA states: "No person shall circumvent a technological measure that effectively controls access to a work protected under this title." 17 U.S.C. § 1201(a)(1)(A). The statute defines a "circumvent[ion]" as any affirmative act taken "to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner." *Id.* § 1201(a)(3)(A).

As explained in greater detail below, the plain language of the statute and large body of case law interpreting it foreclose Reddit's Section 1201 claim against Perplexity for two reasons: First, as a basic matter, Perplexity cannot be liable under the anti-*circumvention* provision because there are no allegations that it "circumvented" *anything*. At most, Reddit alleges that Perplexity is a downstream recipient of SERPs gathered by *other parties* and that those *other parties* circumvented a technological measure—but there is no secondary liability under the DMCA. Second, Reddit's allegations regarding SearchGuard fail to establish that SearchGuard could be a "technological measure" forming the basis of a Section 1201 claim because Google's SERPs are freely available to the public over the Internet. SearchGuard thus does not "effectively control access" to Google's SERPs.

1. Reddit fails to allege that Perplexity engaged in any act of circumvention.

Reddit does not allege that *Perplexity* engaged in any actual circumvention of a technological protection measure. To plead a Section 1201 claim, a plaintiff must allege that the defendant "affirmatively perform[ed] an action that disables or voids the measure" that effectively controls access. *LivePerson, Inc. v. 24/7 Customer, Inc.*, 83 F. Supp. 3d 501, 509

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[2] Perplexity is not named as a defendant on Claims 2 and 3 of the Complaint and therefore does not address those claims herein.

(S.D.N.Y. 2015) (internal quotation marks and citation omitted). The alleged misconduct must be direct and affirmative, akin to "breaking and entering (or hacking) into computer systems." *Id*. By comparison, mere acquisition or receipt of protected work—as Reddit alleges against Perplexity—is not enough. *See I.M.S. Inquiry Mgmt. Sys., Ltd. v. Berkshire Info. Sys. Inc.*, 307 F. Supp. 2d 521, 532 (S.D.N.Y. 2004) ("[A] cause of action under the DMCA does not accrue upon unauthorized and injurious access alone.").

Courts in the Second Circuit regularly dismiss Section 1201(a)(1)(A) claims where the plaintiff fails to allege this threshold requirement of actual, direct circumvention. For example, in *I.M.S. Inquiry Management Systems Ltd*., the court held that although the defendant accessed a password-protected system using credentials issued to a third party, the defendant did not "circumvent" within the meaning of §1201(a)(1), because circumvention requires the avoiding or bypassing of a "technological measure *qua* technological measure." 307 F. Supp. 2d at 532–33. And in *LivePerson*, *Inc.*, the plaintiff alleged that the defendant had gained "unauthorized access to [plaintiff's] secure internal computer system" and "reverse-engineered" its proprietary software. 83 F. Supp. 3d at 510–11. The court there dismissed the DMCA claim on the independent ground that reverse-engineering the software could not separately constitute circumvention because it allegedly occurred *after* the defendant had already breached plaintiff's system. *Id*. Lastly, in *Dish Network L.L.C. v. World Cable*, *Inc.*, the court held that the defendants—television-signal distributors—"cannot be liable under § 1201(a)(1)(A) for the alleged circumvention by [their] subscribers" because Section 1201(a)(1)(A) targets only those who engage in direct circumvention "rather than [] those who facilitate" circumvention. 893 F. Supp. 2d 452, 464 (E.D.N.Y. 2012). The court reasoned that "only defendants 'who use [circumvention devices] may be subject to liability under § 1201(a)(1).'" *Id.* (quoting *Chamberlain Grp., Inc. v. Skylink Techs., Inc.*, 381 F.3d 1178, 1195 (Fed. Cir. 2004)).

Here, Perplexity is even further removed from circumvention than the defendants in the cases above. The complaint fails to allege that Perplexity ever even *encountered*—let alone used a technological process to circumvent—SearchGuard or any other technological safeguard: no

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authentication challenge, no encryption barrier, no password gate, no access-control mechanism of any kind. In *I.M.S.*, *LivePerson*, and *Dish Network*, far more detailed allegations of actual interactions with alleged access controls fell short of "circumvention."[3] Reddit's few and conclusory allegations against Perplexity are even further from the mark. The case law makes plain that a Section 1201(a)(1) claim cannot survive absent plausible allegations that the defendant confronted a specific technological barrier and took affirmative steps to avoid, bypass, or impair it with a technological process of its own. Reddit alleges nothing of the sort about Perplexity.

And while Reddit alleges in conclusory fashion that Perplexity "entered into one or more contracts or business agreements" with SerpApi for the acquisition of data, *see, e.g.*, Compl. ¶ 117, the DMCA's anti-circumvention provision does not apply to Perplexity's conduct as an alleged downstream user of data. Beyond Reddit's failure to allege what (if any) specific data SerpApi provided to Perplexity, Reddit's theory of liability contradicts both the plain language and intent of the DMCA. As the Second Circuit explained in *Corley*, the DMCA "targets the *circumvention* of digital walls . . . but does not concern itself with the *use* of those materials after circumvention has occurred." *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 443 (2d Cir. 2001) (emphasis in original). Courts have thus consistently rejected this downstream-user-of-content theory of liability. *See LivePerson, Inc.*, 83 F. Supp. 3d at 510 (finding that the alleged reverse engineering of the protected software did not "constitute circumvention within the meaning of the DMCA" because the reverse engineering took place *after* the software had already been obtained through a separate breach). The Second Circuit is not alone in this holding either. In *MGE UPS Systems, Inc. v. GE Consumer & Industrial, Inc.*, for example, the Fifth Circuit affirmed a grant of judgment as a matter of law for the defendant where the plaintiff

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[3] *See I.M.S. Inquiry Management Systems Ltd.*, 307 F. Supp. 2d at 532–33 (no circumvention despite allegations that the defendant accessed a password-protected system using another party's credentials); *LivePerson, Inc.*, 83 F. Supp. 3d at 510 (no circumvention even though the defendant allegedly infiltrated backend systems and installed spyware); *Dish Network L.L.C.*, 893 F. Supp. 2d at 464 (no circumvention where the defendants engaged with an encrypted conditional access system but did so through the system's intended process).

"cite[d] no evidence that a [defendant] employee or representative was responsible for circumventing the security features of [plaintiff's] software—as opposed to merely using the software after some other party disabled the [protective] code." 622 F.3d 361, 365–66 (5th Cir. 2010). Citing *Corley*, the Fifth Circuit again emphasized that "[b]ecause § 1201(a)(1) is targeted at circumvention, it does not apply to the use of copyrighted works *after* the technological measure has been circumvented." *Id.* at 366.

So even assuming that Google's search-result snippets were copyrightable, Reddit's theory that Perplexity is liable under the DMCA for its alleged downstream use of data would "extend the DMCA beyond its intended purposes to reach extensive conduct already well-regulated by existing copyright laws." *MGE UPS Sys., Inc.,* 622 F.3d at 366; *see also Point 4 Data Corp. v. Tri-State Surgical Supply & Equip., Ltd.*, 2012 WL 3306575, at *1–2 (E.D.N.Y. Aug. 13, 2012) (holding that "profits generated by use of a protected work subsequent to an act of circumvention are generally not disgorgeable under the DMCA" because otherwise plaintiffs could "end-run around the specific requirements of a suit for copyright infringement"). Accordingly, Reddit cannot cure its failure to allege that Perplexity *circumvented* any measure by alleging instead that Perplexity *used* some unspecified data from SerpApi.

Finally, Reddit's "test post" allegation—which appears to allege only that Reddit created some unspecified post that was crawlable by Google's search engine and that later was cited back to by Perplexity's own search engine—similarly fails to connect Perplexity to any act of circumvention. *See* Compl. ¶ 71. Reddit does not allege how Perplexity supposedly encountered the post, whether the post appeared in any Google SERP, whether SerpApi collected it, or whether Perplexity ever confronted any protective measure to obtain it. At most, Reddit asks the Court to assume that because some similar text appeared in a Perplexity answer, Perplexity must

have received it from one of the other co-defendants who scraped it from Google.[4] But even if

that were a proper inference, it still runs into the same fatal defect underlying Reddit's DMCA

claim at large—the alleged downstream use of "scraped" search results does not constitute the

avoidance, bypassing, or impairment of any technological measure "*qua* technological measure."

I.M.S., 307 F. Supp. 2d at 532–33; *see also LivePerson*, 83 F. Supp. 3d at 510 (reverse

engineering a protected work after it had already been obtained from an alleged breach did not

constitute circumvention). Reddit's ostensible "smoking gun" thus does not render it any more

plausible that Perplexity circumvented or even confronted any technological measure to access

the "test post."

     Because the complaint does not allege that Perplexity circumvented any technological

measure, the Court must dismiss Reddit's DMCA claim against Perplexity for that reason alone.

2.   Reddit has not alleged a technological measure that effectively controls access.

     Reddit's DMCA claim also fails because the complaint fails to identify a "technological

measure that effectively controls access" under the DMCA, because SearchGuard targets only

one method of using Google's SERPs and otherwise leaves the search results openly accessible

on its public search engine. Moreover, to the extent Reddit seeks to rely on its and/or Google's

terms of use, those are not "technological measure[s]" because they are not "technological" at

all.

     First, a Section 1201-qualifying access control "does not naturally extend to a

technological measure that"—like SearchGuard—"restricts *one* form of access but leaves

another route wide open." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 387 F.3d 522,

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[4] Reddit's requested inference is not a plausible one. According to Reddit, the test post was crawlable by Google's search engine. Compl. ¶ 71. There are innumerable alternative paths through which Google's public search-result content may have reached Perplexity, including direct Google queries, third-party indexing or caching services that do not rely on "scraping," user-submitted prompts containing the content of the "test post," or independent republication. Indeed, Perplexity's search engine is designed precisely to retrieve and synthesize factual information from the public web, making the appearance of similar publicly available text in a Perplexity answer entirely unremarkable.

547 (6th Cir. 2004), *abrogated on other grounds by eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006) (emphasis added). So while courts have "held that password protection, DVD encryption measures, and activation and validation keys" qualify as "technological measures," *LivePerson, Inc.*, 83 F. Supp. 3d at 510, they have dismissed Section 1201 claims where the alleged technological measures left the underlying protected work openly accessible. *See, e.g.*, *Digital Drilling Data Sys., L.L.C. v. Petrolink Servs., Inc.*, 965 F.3d 365, 376 (5th Cir. 2020) (security features that "restrict[] certain unauthorized uses" of content do not "effectively control" access where one can still access the content "via third party programs without ever encountering those measures"); *Couponcabin LLC v. Savings.com, Inc.*, 2016 WL 3181826, at *1, *6 (N.D. Ind. June 8, 2016) (dismissing Section 1201 claim because the technological measures—blocking website access for traffic from certain internet service providers—did not control access when the "website remain[ed] accessible" to traffic from other internet service providers); *Agfa Monotype Corp. v. Adobe Sys., Inc.*, 404 F. Supp. 2d 1030, 1036 (N.D. Ill. 2005) (finding that the technological measure there does not "effectively control access" because the work it protects is "freely available, the data [for it] is not encrypted, and no passwords or authentication is required to access" the work).

Google's SearchGuard does not "effectively control access" because, while it targets one *method of using* Google's search results ("large-scale automated copying and reproduction"), it leaves those results and the underlying snippets of Reddit users' content freely available to the public over the Internet. *See* Compl. ¶¶ 49, 70, 76, 95, 97. Nothing in the complaint suggests that a user must overcome "digital walls such as encryption codes or password protections" to access the Google search results containing Reddit material. *See Corley*, 273 F.3d at 435 (explaining that the purpose of the DMCA is to support "the efforts of copyright owners to protect their works from piracy *behind digital walls*" (emphasis added)). Instead, any person can simply open a browser, enter a search query for Reddit content, and retrieve the same Google SERPs that Reddit claims were protected without the need for any "passwords or authentication" to access those results. *See Agfa Monotype Corp.*, 404 F. Supp. 2d at 1036 (technological measure did not

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"effectively control access" where the work it protected was "freely available"). So just as the unencrypted printer program in *Lexmark* was always freely readable from the device's memory regardless of the "authentication sequence," Google's search results containing Reddit content are freely accessible from the open web regardless of SearchGuard. *See Lexmark Int'l, Inc.*, 387 F.3d at 547; *see also Digital Drilling Data Sys., L.L.C.*, 965 F.3d at 376 (holding that security features that "restrict[] certain unauthorized uses" of content do not "effectively control" access where one can still access the content "via third party programs without ever encountering those measures"). Accordingly, the lack of any "digital wall" or "locked door" protecting Google's search results is fatal to Reddit's Section 1201 claim.

  Second, the passing allegations regarding Reddit's or Google's terms of use do not identify a *technological measure* that effectively controls access. *See* Compl. ¶¶ 6, 48–51, 56. Contractual terms at most regulate permission to access or use content; they do not transform alleged noncompliance into "circumvention" of a technological barrier. Courts are explicit that "[v]iolating contractual restrictions on access to or distribution of encrypted transmissions is not the type of 'circumvention' that Congress intended to combat." *Joint Stock Co. v. Infomir LLC*, 2017 WL 696126, at *18 (S.D.N.Y. Feb. 15, 2017). Reddit thus cannot assert an anti-circumvention claim based on any alleged violation of terms of use (by the other co-defendants) that ostensibly forbid the "scraping" of data, since bypassing "permission" is distinct from bypassing "digital walls" under the DMCA. *I.M.S. Inquiry Mgmt. Sys., Ltd.*, 307 F. Supp. 2d at 532; *see also Dish Network L.L.C.*, 893 F. Supp. 2d at 464 (distinguishing between "contractual barriers" and "digital walls"); *In re OpenAI, Inc. Copyright Infringement Litig.*, 2025 WL 3635559, at *4 (S.D.N.Y. Dec. 15, 2025) (holding that textual instructions asking users to "refrain from scraping certain content do not 'effectively control' access to that content any more than a sign requesting that visitors 'keep off the grass' effectively controls access to a lawn").

  Because Reddit has not alleged that Perplexity circumvented a technological measure that effectively controls access, its DMCA claim must be dismissed.

B.   The state-law claims are preempted by the Copyright Act.

Reddit's state-law claims are preempted because they do nothing more than assert rights squarely within the scope of the Copyright Act—namely, that Reddit is entitled to recover for Perplexity's alleged contract with SerpApi to *copy* Reddit users' content without authorization for its own use.[5] Section 301 of the Copyright Act provides for "the preemption of state law claims that are interrelated with copyright claims in certain ways." *Nat'l Basketball Ass'n v. Motorola, Inc.*, 105 F.3d 841, 848 (2d Cir. 1997). The Second Circuit applies a two-step inquiry to determine if a state law claim is preempted by the Copyright Act. ***First***, the work must "come within the subject matter of copyright as specified by sections 102 and 103[.]" *In re Jackson*, 972 F.3d 25, 42 (2d Cir. 2020). ***Second***, the right asserted must be "equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106." *Id.* at 43. Because both prongs are met for each of Reddit's unfair competition, unjust enrichment, and civil conspiracy claims, the Court should dismiss them as preempted.

The first prong is easily disposed of, because Reddit concedes that the pieces of content Perplexity allegedly acquired through SerpApi are literary works within the subject matter of copyright. *See* Compl. ¶¶ 1, 2, 76 (repeated references to "copyrighted content on Reddit"). Reddit also effectively concedes the second prong, because, at their core, each of Reddit's state-law claims seeks to protect exactly the same rights—the right to control reproduction, adaptation, and distribution of Reddit content—created under the Copyright Act. "When analyzing the [equivalence] requirement, courts often look to the precise elements of the cause of action brought under state law and compare them to the elements that must be pled to bring a

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[5] That Reddit does not bring a copyright infringement claim does not affect the preemption analysis. Courts in this circuit have repeatedly recognized that Congress intended for the scope of copyright preemption to be "broad" and that the Copyright Act "can preempt a state law claim when a plaintiff has not brought a copyright infringement claim." *Elliott v. Cartagena*, 2025 WL 486634, at *12 (S.D.N.Y. Feb. 13, 2025); *see also Melendez v. Sirius XM Radio, Inc.*, 50 F.4th 294, 298 (2d Cir. 2022) (finding that right of publicity claims were not "not qualitatively different from copyright infringement claims" and were therefore subject to preemption); *Indiaweekly.com, LLC v. Nehaflix.com, Inc.*, 2011 WL 13228167, at *17 (D. Conn. Jan. 19, 2011) (holding that though Nehaflix "has no copyrights in the images," "they are [still] the *type* of work protected by the Copyright Act").

comparable claim under the Copyright Act." *Melendez v. Sirius XM Radio, Inc.*, 50 F.4th 294, 307 (2d Cir. 2022). "[T]he state law claim must involve acts of reproduction, adaptation, performance, distribution, or display." *Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc.*, 373 F.3d 296, 305 (2d Cir. 2004). And while the "existence of an extra element needed to bring a claim under state law may weigh against preemption," *Melendez,* 50 F.4th at 307, the "critical inquiry is whether such extra elements of the state law claim beyond what is required for copyright infringement 'change[] the nature of the action so that it is qualitatively different from a copyright infringement claim,'" *Jackson*, 972 F.3d at 43–44 (citation omitted). The Second Circuit takes a "restrictive view of what extra elements transform an otherwise equivalent claim into one that is qualitatively different from a copyright infringement claim." *Briarpatch*, 373 F.3d at 306. Here, each of the state law claims, as pleaded, easily satisfy this prong.

Unfair competition. Reddit's unfair-competition-by-misappropriation claim is precisely the type of claim that courts in this circuit consistently find to be preempted. "The Second Circuit has consistently held that unfair competition claims alleging the misappropriation of content in essence seek the enforcement of rights conferred by the Copyright Act and are thus preempted." *Indiaweekly.com, LLC v. Nehaflix.com, Inc.*, 2011 WL 13228167, at *17 (D. Conn. Jan. 19, 2011) (finding preemption of an unfair competition claim involving copying of content from Nehaflix's website); *see also BanxCorp v. Costco Wholesale Corp.*, 723 F. Supp. 2d 596, 618 (S.D.N.Y. 2010) (same regarding alleged misappropriation of financial performance indices); *Walker v. Time Life Films, Inc.*, 615 F. Supp. 430, 441 (S.D.N.Y. 1985), *aff'd*, 784 F.2d 44 (2d Cir. 1986) (same regarding alleged misappropriation of the contents and ideas in a book).

Here, Reddit alleges misappropriation based on Perplexity's alleged contract with SerpApi to "access and scrape" Reddit content for its "own commercial gain" and to "damage Reddit's competitive position." Compl. ¶¶ 103–04. These allegations merely assert a right to control the reproduction of Reddit users' content—rights squarely protected and exclusively governed by the Copyright Act. In *New York Times Co. v. Microsoft Corp.*, 777 F. Supp. 3d 283, 301 (S.D.N.Y. 2025), the court found the plaintiffs' unfair-competition-by-misappropriation

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claim to be preempted under nearly identical circumstances: the claim relied on the defendant's alleged scraping of news content from the plaintiff's site to train artificial intelligence models. Because the claim alleged no extra elements beyond acts equivalent to reproduction, distribution, or display, the court reasoned, it fell squarely within the bounds of rights conferred by the Copyright Act. *Id.* at 320, 323. *See also Nat'l Basketball Ass'n v. Motorola, Inc.*, 105 F.3d 841, 851 (2d Cir. 1997) ("[U]nfair competition and misappropriation claims grounded solely in the copying of a plaintiff's protected expression are preempted by section 301.").

Reddit's allegations of "bad faith" and "knowing" circumvention of technological controls do not constitute "extra elements" that qualitatively transform the claim. Compl. ¶ 106. "[B]ad faith [], like other scienter requirements, [is] insufficient to establish an 'extra element'" in the preemption analysis. *BanxCorp*, 723 F. Supp. 2d at 617. This is because elements such as "awareness or intent . . . alter the action's scope but not its nature[.]" *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 982 F.2d 693, 717 (2d Cir. 1992) (internal quotation marks omitted). Nor do the passing references to allegations involving circumvention of technological controls change the analysis: these allegations merely describe the *mechanism* by which defendants allegedly accessed and copied Reddit users' content and do not constitute a qualitatively distinct extra element. *See ML Genius Holdings LLC v. Google LLC*, 2022 WL 710744, at *3 (2d Cir. Mar. 10, 2022) (explaining that the preemption inquiry turns on whether a right protected by the Copyright Act constitutes the "gravamen" of the state-law claim). The gravamen of Reddit's unfair competition claim is the alleged reproduction and use of Reddit users' copyrighted material—and the supposed market substitution or lost licensing revenue flowing from that conduct—which are classic copyright interests and harms. *See Myrieckes v. Woods*, 2009 WL 884561, at *5 (S.D.N.Y. Mar. 31, 2009). Thus, Reddit's unfair competition claim should be dismissed as preempted. *See Moser Pilon Nelson Architects, LLC v. HNTB Corp.*, 2006 WL 2331013, at *11 (D. Conn. Aug. 8, 2006) (collecting cases) ("[C]ourts routinely grant motions to dismiss state law claims on the basis of [copyright] preemption.").

Unjust Enrichment. Reddit's unjust enrichment claim—which relies on the same

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allegations as the unfair competition claim—fares no better. Courts in this Circuit have repeatedly found such claims to be preempted. *See, e.g.*, *Ardis Health, LLC v. Nankivell*, 2012 WL 5290326, at *10 (S.D.N.Y. Oct. 23, 2012) ("Courts have generally concluded that the theory of unjust enrichment protects rights that are essentially 'equivalent' to rights protected by the Copyright Act; thus, unjust enrichment claims related to the use of copyrighted material are generally preempted."); *Atrium Grp. De Ediciones Y Publicaciones, S.L. v. Harry N. Abrams, Inc.*, 565 F. Supp. 2d 505, 509 (S.D.N.Y. 2008) (finding unjust enrichment claim involving misappropriation of architecture and design books to be preempted); *Myrieckes*, 2009 WL 884561, at *5 (same involving alleged reproduction and adaptation of a book). Numerous courts addressing the copying and use of publicly available data to build software products have reached the same result as well. *See, e.g.*, *In re OpenAI, Inc. Copyright Infringement Litig.*, 2025 WL 3635559, at *3–4 (finding unjust enrichment claim to be preempted where "[t]he basis of [the claim] is that OpenAI used [the plaintiff's] copyrighted works in an unauthorized way"); *Doe 1 v. GitHub, Inc.*, 2024 WL 235217, at *7–8 (N.D. Cal. Jan. 22, 2024) (same); *Andersen v. Stability AI, Ltd.,* 744 F. Supp. 3d 956, 972–73 (N.D. Cal. 2024) (same).

The basic elements of an unjust enrichment claim in New York require proof that (1) the defendant was enriched, (2) at plaintiff's expense, and that (3) equity and good conscience militate against permitting defendant to retain what plaintiff is seeking to recover. *See, e.g.*, *Clark v. Daby*, 751 N.Y.S.2d 622, 623 (2002). Under Reddit's theory of the case, the act that allegedly satisfies the second and third elements of unjust enrichment is the unauthorized act of "gain[ing] access to and scrap[ing]" content authored by Reddit users. Compl. ¶ 111. In other words, the complaint alleges only that the content was copied and reproduced for display. Reddit's claim thus seeks only to vindicate any reproduction and distribution rights it might have in user-generated content, rights that lie exclusively within the domain of the Copyright Act.

Nor does the first element of an unjust enrichment claim—enrichment—add an "extra element" to the preemption analysis. Here, Reddit alleges that Perplexity was enriched by "obtaining Reddit data through its arrangement with SerpApi[.]" Compl. ¶ 112. While a showing

of enrichment is not required to prove copyright infringement, the enrichment element "limits the scope of the claim but leaves its fundamental nature unaltered." *Briarpatch,* 373 F.3d at 306–07 (citing cases); s*ee also Atrium Grp.*, 565 F. Supp. 2d at 509 ("If the law were otherwise, every time a copyright infringer obtained any profit from his infringing activity, the [rights holder] would be able to assert a state claim for unjust enrichment."). Reddit's unjust enrichment claim is therefore entirely premised on the rights protected by the Copyright Act and should be dismissed as preempted.

   Civil Conspiracy. Reddit's claim for civil conspiracy is also preempted because the claim alleges nothing more than a conspiracy to violate the Copyright Act. *See Irwin v. ZDF Enterprises GmbH*, 2006 WL 374960, at *4 (S.D.N.Y. Feb. 16, 2006) ("[C]laims for conspiracy to violate the Copyright Act are preempted by federal copyright law[.]"). Because copyright law already "recognizes the concepts of contributory infringement and vicarious copyright infringement . . . concepts, which extend joint and several liability to those who participate in the copyright infringement . . . [a] civil conspiracy claim does not add substantively to the underlying federal copyright claim and should therefore be preempted." *Id.* As explained above, Reddit's allegation that Perplexity improperly "acquir[ed] bulk data" and "use[d]" that data in its "commercial offerings" is simply a repackaged claim of copyright infringement. Compl. ¶ 118. Alleging that "Perplexity contracted with SerpApi" to achieve those ends fails to change the nature of the action such that it is "qualitatively different" from a copyright infringement claim. *Jackson*, 972 F.3d at 43–44. Reddit's civil conspiracy claim should therefore be dismissed.

   C. The state-law claims also fail on the merits.

   In addition to being preempted, Reddit's state-law claims—which merely repackage its deficient DMCA claim (which is itself merely a failed attempt to assert Copyright Act claims for copyrights Reddit does not own) and generally fail to distinguish between Perplexity and the defendants actually accused of "scraping"—fail on the merits because Reddit has failed to allege facts sufficient to meet the elements of each claim. The unjust enrichment claim additionally fails because it is duplicative of the DMCA claim.

1. The unjust enrichment claim fails on the merits.

a. The unjust enrichment claim fails because it is duplicative.

As a threshold matter, Reddit's unjust enrichment claim fails because it is redundant of Reddit's DMCA claim. "[C]laims for unjust enrichment will not survive a motion to dismiss where plaintiffs fail to explain how their unjust enrichment claim is not merely duplicative of their other causes of action." *Gill v. Nat'l Football League*, 2021 WL 5087900, at *7 (S.D.N.Y. Nov. 2, 2021) (Engelmayer, J.). That is the case here: Reddit alleges that "Defendants have been unjustly enriched at Reddit's expense" by circumventing technological control measures to scrape Reddit data. Compl. ¶ 111. This alleged conduct (in which Perplexity did not even participate) is the same as that underpinning Reddit's circumvention claim. *See id.* ¶¶ 81, 84–85. Indeed, Reddit itself says as much, alleging that "Defendants' conduct violates federal law, as detailed above"—that is, as detailed with respect to Reddit's DMCA claims. *Id.* ¶ 114.

b. The unjust enrichment claim fails because Reddit alleges no benefit received by Perplexity through wrongful conduct or at Reddit's expense.

Not only is the unjust enrichment duplicative, but Reddit has failed to plead facts sufficient to sustain it. To state a claim for unjust enrichment, the plaintiff must allege that "(1) [the] defendant was enriched, (2) at plaintiff's expense, and (3) equity and good conscience militate against permitting defendant to retain what plaintiff is seeking to recover." *Briarpatch Ltd., L.P.*, 373 F.3d at 306. Reddit has alleged neither that "equity and good conscience" support its claim nor that Perplexity was enriched at its expense.

Reddit fails to show that Perplexity's conduct is contrary to "equity and good conscience" because it does not adequately allege that Perplexity's conduct was wrongful. In addressing this requirement, courts consider "whether the defendant's conduct was tortious or fraudulent." *See Paramount Film Distrib. Corp. v. State of New York*, 30 N.Y.2d 415, 421 (N.Y. 1972). Because the unjust enrichment claim rests on the same factual allegations as the defective DMCA claim and Reddit has not alleged any other wrongdoing by Perplexity, Reddit has not adequately alleged that Perplexity's "conduct was tortious or fraudulent."

Nor has Reddit adequately alleged that Perplexity was enriched at its expense. Reddit alleges that the "scraping" of Reddit content harmed it in "various ways," *see* Compl. ¶ 76. But Perplexity is not alleged to have "scraped" Reddit data, so any harm stemming from that "scraping" is not attributable to Perplexity. Even setting that aside, none of Reddit's alleged injuries are plausible. ***First***, Reddit says the "scraping" of its content caused it to lose licensing fees and other related "commercial opportunities" because parties that do or could license data from Reddit are "encourage[d]" to "instead use similar techniques as Defendants to gain access" to Reddit content. Compl. ¶ 77. But Reddit alleges no facts about its purported lost "opportunities," such as how much they were for, whom they were with, or why their loss is Perplexity's fault (especially considering that it does not allege that Perplexity "scraped" its content). Its conclusory allegations are therefore unsupported by sufficient facts to show that, but for Perplexity's alleged purchase of Reddit users' data gathered by others, Reddit would have retained or entered any licensing arrangements. *See Express Gold Cash, Inc. v. Beyond 79, LLC*, 2019 WL 4394567, at *9 (W.D.N.Y. Sep. 13, 2019) (dismissing unjust enrichment claim where plaintiff made "conclusory allegation" of harm but did not "allege any facts" showing that "but for Defendant's deceptive conduct, consumers would have done business with Plaintiff").

Second, Reddit says that its users "care about how their content will be treated when it is posted to Reddit" and "place great trust in Reddit" to "steward[]" that content, such that the scraping of that content impacts "Reddit's reputation" and "its users' trust" in it. Compl. ¶ 76. But Reddit alleges no other facts suggesting that Perplexity—which is not alleged to "scrape" Reddit data—is somehow doing something that would impact Reddit's reputation or its users' trust. Indeed, it is not plausible that Perplexity even could harm Reddit users' "anonymity and privacy," *id.*, because Reddit posts are public and accessible to anyone with an internet connection. *Cf. Reid v. Ingerman Smith LLP*, 2012 WL 6720752, at *2 (E.D.N.Y. Dec. 27, 2012).

Third, Reddit says that it was "harmed by Defendants' conduct because it is forced to invest significant resources into [its] anti-scraping efforts[.]" Compl. ¶ 78. But the "time and

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expense" a party spends to combat a perceived risk of some other underlying harm are not legally cognizable injuries because they "are solely the result of" a "speculative risk of future injury that may never occur." *E.g.*, *Shafran v. Harley-Davidson, Inc.*, 2008 WL 763177, at *3 (S.D.N.Y. Mar. 20, 2008) (dismissing unjust enrichment claim where plaintiff's alleged injury was cost of monitoring to prevent future harm).

2.   The unfair competition claim fails because Reddit fails to allege misappropriation, bad faith, or special damages.

To state an unfair competition claim based on misappropriation, a plaintiff must allege that the defendant "(1) misappropriated the plaintiff's labors, skills, expenditures, or good will; and (2) displayed some element of bad faith in doing so." *Apple Mortgage Corp. v. Barenblatt*, 162 F. Supp. 3d 270, 284 (S.D.N.Y. 2016). The plaintiff must also allege that they suffered "special damages," such as that the defendant "diverted plaintiff's customers and business." *Barbagallo v. Marcum LLP*, 820 F. Supp. 2d 429, 447 (E.D.N.Y. 2011). Reddit fails to plead facts sufficient to establish either element or that it suffered special damages.

Reddit does not plausibly allege that Perplexity engaged in any act of misappropriation or acted in bad faith. The unfair competition claim, like the unjust enrichment claim, merely repackages the circumvention allegations underlying the DMCA claim. *See* Compl. ¶¶ 102, 106 ("Defendants have acted in bad faith by knowingly circumventing the technological control measures[.]"). Here too, these allegations are deficient with respect to Perplexity, because Reddit does not—and could not—allege that Perplexity circumvented anything, let alone that it did so in bad faith. And Reddit alleges no other misappropriation by Perplexity.

Reddit also fails to adequately allege that it suffered "special damages." Reddit reiterates the same damages discussed above with respect to unjust enrichment, which fail here for the same reasons. Reddit also alleges, in passing and without further explication, that the defendants have achieved a competitive advantage by "removing the need for users to access Reddit content directly through Reddit." Compl. ¶ 104. But this allegation is implausible considering that, by Reddit's own allegation, Perplexity links users back to Reddit if it generates an answer that

incorporates Reddit content. *See id.* ¶ 69 (Perplexity "cite[s]" Reddit). If anything, this suggests

that Perplexity increases Reddit traffic by directing users to Reddit threads containing content in

which they are interested—just like SERPs.

> **3.   The civil conspiracy claim fails because there is no separate actionable tort, and Reddit has also not adequately pleaded a conspiracy.**

Under New York law, there is no independent cause of action for civil conspiracy.

Reich v. Lopez, 38 F. Supp. 3d 436, 460 (S.D.N.Y. 2014), *aff'd*, 858 F.3d 55 (2d Cir. 2017).

Instead, "[a]llegations of conspiracy are permitted only to connect the actions of separate

defendants with an otherwise actionable tort." *Generation Next Fashions Ltd. v. JP Morgan

Chase Bank, NA.*, 698 F. Supp. 3d 663, 688 (S.D.N.Y. 2023) (citation and quotation marks

omitted). Because, as explained above, Reddit's state-law claims fail, its civil conspiracy claim

must be dismissed because there is no separate actionable tort on which it stands. *See Uni-World

Cap., L.P. v. Preferred Fragrance, Inc.*, 43 F. Supp. 3d 236, 251 (S.D.N.Y. 2014); *Fisk v.

Letterman*, 424 F. Supp. 2d 670, 677 (S.D.N.Y. 2006).

And Reddit similarly cannot bootstrap its failed DMCA claim against Perplexity into a

civil conspiracy theory. The DMCA's anti-circumvention and anti-trafficking provisions—17

U.S.C. §§ 1201(a)(1)(A), 1201(a)(2), and 1201(b)(1)—delineate precisely who may be held

liable: (1) those who themselves circumvent access controls; (2) those who traffic in

technologies that circumvent measures "designed to *prevent access* to a work;" and (3) those

who traffic in technologies that circumvent measures designed to "*permit access* to a work

but *prevent copying* of the work." *Corley*, 273 F.3d at 440–41 (describing the extensive

legislative history of the DMCA and how it led to the "three provisions targeted at the

circumvention of technological protections"). In other words, Congress already specified who

may be secondarily liable beyond the direct circumventer—traffickers of circumvention tools.

"The fact that Congress chose to impose some forms of secondary liability, but not others,

indicates a deliberate congressional choice with which the courts should not interfere." *Cent.

Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 184 (1994). Indeed,

courts regularly reject conspiracy and aiding and abetting claims based on alleged violations of a federal statute where the statute does not provide for those claims. *See, e.g.*, *In re Currency Conversion Fee Antitrust Litig.*, 265 F. Supp. 2d 385, 432–33 (S.D.N.Y. 2003); *Grady v. F.D.I.C.*, 2014 WL 1364932, at *7 (D. Ariz. Mar. 26, 2014). Reddit thus cannot use a state-law conspiracy claim to expand the scope of conduct prohibited by the DMCA, when the DMCA *by design* does not allow for this kind of secondary liability.

Furthermore, even if Reddit had adequately pleaded a separate actionable tort—which it has not—Reddit has not adequately alleged that Reddit and SerpApi entered into an agreement to "effectuate an unlawful purpose" as required to state a civil conspiracy claim. *See Cohen v. Stevanovich*, 722 F. Supp. 2d 416, 437 (S.D.N.Y. 2010). Reddit alleges only conclusorily that Perplexity and SerpApi "have entered into one or more contracts or business agreements for the purpose of circumventing the technological control measures described above in order to gain access to Reddit data on a large-scale, unauthorized, and automated basis . . . ." Compl. ¶ 117. But this bareboned allegation merely recites the elements of a conspiracy claim and the underlying DMCA claim at issue. Indeed, as pleaded, it is not clear whether the alleged contract has anything to do with the SERPs or any of SerpApi's other alleged conduct *at all*; Reddit alleges only that "Perplexity has contracted with SerpApi *for the purpose of acquiring bulk data* . . . ." *Id.* ¶ 118 (emphasis added). So even assuming Reddit has plausibly alleged the existence of a contract, a purported business contract for the acquisition of "bulk data" does not constitute an agreement to unlawfully circumvent the technological control measures of a third party. *See Kitchen Winners NY Inc. v. Rock Fintek LLC*, 668 F. Supp. 3d 263, 299–300 (S.D.N.Y. 2023) (dismissing a civil conspiracy claim because although the complaint contained facts suggesting that the relevant parties "had a business relationship," the complaint did "not contain any non-conclusory allegations that the [relevant parties] had the requisite 'agreement' . . . to commit any wrong"). The complaint does not otherwise allege that Perplexity directed or supervised the technical methods SerpApi allegedly used to gather Google's search results. Given the paucity of non-conclusory allegations that Perplexity entered into any

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agreement with SerpApi to "effectuate an unlawful purpose," the Court must dismiss Reddit's civil conspiracy claim.

V.   CONCLUSION

For the foregoing reasons, the Court should dismiss Reddit's claims against Perplexity.

Respectfully submitted,
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Dated: January 2, 2026

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CERTIFICATE OF COMPLIANCE

In accordance with Local Civil Rule 7.1(c), I certify that the foregoing Memorandum of Law is 8037 words, exclusive of the caption page, table of contents, table of authorities, and signature block. The basis of my knowledge is the word count feature of the word-processing system used to prepare this memorandum.

Dated: January 2, 2026

/s/ *Eric H. MacMichael*
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