

CLEARY GOTTlieb STEEN
& HAMILTON LLP
Angela L. Dunning (212047)
adunning@cgsh.com
Samuel Blankenship (339905)
sblankenship@cgsh.com
1841 Page Mill Rd Suite 250
Palo Alto, CA 94304
Tel: +1 (650) 815-4100

Arminda Bepko (admitted *pro hac vice*)
abepko@cgsh.com
Amira Perryman
aperryman@cgsh.com (admitted *pro hac vice*)
One Liberty Plaza
New York, NY 10006

Attorneys for Defendant Midjourney, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SARAH ANDERSEN, et al.,

Plaintiffs,

v.

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

Defendants.

CASE NO. 3:23-CV-00201-WHO

**DEFENDANT MIDJOURNEY, INC'S ANSWER TO
SECOND AMENDED COMPLAINT**

Before: Hon. William H. Orrick

1 Defendant Midjourney, Inc. (“Midjourney”), by and through counsel, hereby responds to the
2 Second Amended Complaint (“SAC”) filed by Plaintiffs Sarah Andersen, Kelly McKernan, Karla
3 Ortiz, Hawke Southworth, Grzegorz Ruowski, Gregory Manchess, Gerald Brom, Jingna Zhang, Julia
4 Kaye, and Adam Ellis, (together, “Plaintiffs”). Unless specifically admitted, Midjourney denies each
5 of the allegations in the SAC.

6 **I. AI IMAGE PRODUCTS ARE TRAINED ON VAST NUMBERS OF COPYRIGHTED**
7 **IMAGES WITHOUT CONSENT, CREDIT, OR COMPENSATION AND VIOLATE THE**
8 **RIGHTS OF MILLIONS OF ARTISTS¹**

9 1. Midjourney admits that generative artificial intelligence (“AI”) uses machine learning
10 algorithms to identify patterns and statistical probabilities from its training data to enable a user to
11 generate original content informed by user prompting and a variety of other user-selected parameters.
12 Midjourney otherwise denies the allegations in paragraph 1 to the extent they are directed to
13 Midjourney or its models, software, tools, or platform (the “Midjourney Tools”). As paragraph 1
14 pertains generally to unspecified “AI image product[s]” and not to any particular model or product,
15 Midjourney lacks knowledge and information sufficient to form a belief as to the truth of the remaining
16 allegations in paragraph 1, and on that basis denies them.

17 2. Midjourney admits that generative AI models may be pre-trained on datasets which
18 may consist of images or images paired with text. Midjourney otherwise denies the allegations in
19 paragraph 2 to the extent they are directed to Midjourney or the Midjourney Tools. As paragraph 2
20 pertains generally to unspecified generative “AI image products” and not to any particular model or
21 product, Midjourney lacks knowledge and information sufficient to form a belief as to the truth of the
22 remaining allegations in paragraph 2, and on that basis denies them.

23 3. Midjourney admits that users of the Midjourney Tools can generate original content
24 informed by user prompting and a variety of other user-selected parameters. Midjourney otherwise
25 denies the allegations in paragraph 3 to the extent they are directed to Midjourney or the Midjourney
26

27 ¹ Midjourney includes the headings as listed in the SAC without any admission as to the accuracy
28 or appropriateness of the headings. To the extent a response is required, Midjourney denies all
allegations set out in this and the other headings in the SAC.

1 Tools. As paragraph 3 pertains generally to unspecified “AI image products” and not to any particular
2 model or product, Midjourney lacks knowledge and information sufficient to form a belief as to the
3 truth of the remaining allegations in paragraph 3, and on that basis denies them.

4 **4.** To the extent this paragraph purports to summarize or characterize the contents of the
5 webpages cited in footnotes 1 and 2, Midjourney denies Plaintiffs’ characterization as the webpages
6 speak for themselves. Midjourney lacks knowledge and information sufficient to form a belief as to
7 the truth of the remaining allegations in paragraph 4, and on that basis denies them.

8 **5.** Midjourney admits that it has trained multiple generative AI models using publicly
9 available images and that it makes the Midjourney Tools available to users in multiple ways, including
10 through a subscription. Except as expressly admitted, Midjourney denies the allegations in paragraph
11 5.

12 **6.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
13 of the allegations in paragraph 6, and on that basis denies them.

14 **7.** The allegations in this paragraph state legal conclusions to which no response is
15 required. To the extent a response is deemed required, Midjourney denies the allegations in paragraph
16 7.

17 **8.** Midjourney denies the allegations in paragraph 8 to the extent they are directed to
18 Midjourney or the Midjourney Tools. Midjourney lacks knowledge and information sufficient to form
19 a belief as to the truth of the remaining allegations in paragraph 8, and on that basis denies them.

20 **9.** Midjourney denies the allegations in paragraph 9.

21 **10.** The allegations in this paragraph state legal conclusions to which no response is
22 required. To the extent a response is required, Midjourney denies the allegations in paragraph 10.

23 **II. JURISDICTION AND VENUE**

24 **11.** The allegations in this paragraph state legal conclusions to which no response is
25 required. To the extent a response is required, Midjourney admits that this action purports to arise
26 under the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*, and that the Court has original
27 subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, provided that standing and
28 other requirements are met. Except as expressly admitted, Midjourney denies the allegations in the

1 body of paragraph 11.

2 As to footnote 4, Midjourney admits that the quoted language from ECF 223 and the cited case
3 appear in those documents, respectively, along with other text. To the extent this footnote purports to
4 summarize or characterize the contents of ECF 223, Midjourney denies Plaintiffs' characterization as
5 the documents speak for themselves. The allegations in this footnote otherwise state legal conclusions
6 to which no response is required. Except as expressly admitted, Midjourney denies the allegations in
7 footnote 4.

8 **12.** The allegations in this paragraph state legal conclusions to which no response is
9 required. To the extent a response is required, Midjourney admits that it is headquartered in this
10 District, that this Court has personal jurisdiction over it with respect to the instant action, and that
11 venue is proper in this judicial district. Except as expressly admitted, Midjourney denies the
12 allegations in paragraph 12.

13 **13.** The allegations in this paragraph state legal conclusions to which no response is
14 required. To the extent a response is required, Midjourney admits that assignment of this case to the
15 San Francisco Division is proper, and that Midjourney is headquartered in San Francisco. Except as
16 expressly admitted, Midjourney denies the allegations in paragraph 13.

17 **III. PLAINTIFFS**

18 **14.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
19 of the allegations in paragraph 14, and on that basis denies them.

20 **15.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
21 of the allegations in paragraph 15, and on that basis denies them.

22 **16.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
23 of the allegations in paragraph 16, and on that basis denies them.

24 **17.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
25 of the allegations in paragraph 17, and on that basis denies them.

26 **18.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
27 of the allegations in paragraph 18, and on that basis denies them.

28 **19.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth

1 of the allegations in paragraph 19, and on that basis denies them.

2 **20.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
3 of the allegations in paragraph 20, and on that basis denies them.

4 **21.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
5 of the allegations in paragraph 21, and on that basis denies them.

6 **22.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
7 of the allegations in paragraph 22, and on that basis denies them.

8 **23.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
9 of the allegations in paragraph 23, and on that basis denies them.

10 **24.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
11 of the allegations in paragraph 24, and on that basis denies them.

12 **25.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
13 of the allegations in paragraph 25, and on that basis denies them.

14 **26.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
15 of the allegations in paragraph 26, and on that basis denies them.

16 **IV. DEFENDANTS**

17 **27.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
18 of the allegations in paragraph 27, and on that basis denies them.

19 **28.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
20 of the allegations in paragraph 28, and on that basis denies them.

21 **29.** Midjourney admits that Midjourney is a Delaware corporation with its principal place
22 of business in San Francisco, that Midjourney was founded in 2021 by David Holz, and that David
23 Holz serves as Midjourney's CEO. Except as expressly admitted, Midjourney denies the allegations
24 in paragraph 29.

25 **30.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
26 of the allegations in paragraph 30, and on that basis denies them.

27 **31.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
28 of the allegations in paragraph 31, and on that basis denies them.

V. AGENTS AND CO-CONSPIRATORS

32. Midjourney denies the allegations in paragraph 32 to the extent they are directed to Midjourney. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 32, and on that basis denies them.

33. Midjourney denies the allegations in paragraph 33 to the extent they are directed to Midjourney. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 33, and on that basis denies them.

VI. CLASS ALLEGATIONS

A. Class Definitions

34. The allegations in paragraph 34 state legal conclusions or arguments to which no response is required. To the extent a response is required, Midjourney denies the allegations in paragraph 34.

35. The allegations in paragraph 35 state legal conclusions or arguments to which no response is required. To the extent a response is required, Midjourney denies that this action is suitable for class treatment under Rule 23 and denies all other allegations in paragraph 35.

B. Numerosity

36. The allegations in paragraph 36 state legal conclusions or arguments to which no response is required. To the extent a response is required, Midjourney denies that it possesses information concerning the “exact number” of putative class members, and denies that this action is suitable for class treatment under Rule 23. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 36, and on that basis denies them.

C. Typicality

37. The allegations in paragraph 37 state legal conclusions or arguments to which no response is required. To the extent a response is required, Midjourney denies that this action is suitable for class treatment under Rule 23 and otherwise denies the allegations in paragraph 37.

D. Commonality & Predominance

38. The allegations in paragraph 38 state legal conclusions or arguments to which no response is required. To the extent a response is required, Midjourney denies that this action is suitable

1 for class treatment under Rule 23 and otherwise denies the allegations in paragraph 38.

2 **39.** The allegations in paragraph 39 state legal conclusions or arguments to which no
3 response is required. To the extent a response is required, Midjourney denies that this action is suitable
4 for class treatment under Rule 23 and otherwise denies the allegations in paragraph 39.

5 **40.** The allegations in paragraph 40 state legal conclusions or arguments to which no
6 response is required. To the extent a response is required, Midjourney denies that this action is suitable
7 for class treatment under Rule 23 and otherwise denies the allegations in paragraph 40.

8 **41.** The allegations in paragraph 41 relate to claims that have since been dismissed with
9 prejudice and state legal conclusions or arguments to which no response is required. To the extent a
10 response is required, Midjourney denies that this action is suitable for class treatment under Rule 23
11 and otherwise denies the allegations in paragraph 41.

12 **42.** The allegations in paragraph 42 state legal conclusions or arguments to which no
13 response is required. To the extent a response is required, Midjourney denies that this action is suitable
14 for class treatment under Rule 23 and otherwise denies the allegations in paragraph 42.

15 **43.** The allegations in paragraph 43 state legal conclusions or arguments to which no
16 response is required. To the extent a response is required, Midjourney admits that its conduct was
17 appropriate, including under the doctrine of fair use. Except as expressly admitted, Midjourney denies
18 that this action is suitable for class treatment under Rule 23 and otherwise denies the allegations in
19 paragraph 43.

20 **44.** The allegations in paragraph 44 state legal conclusions or arguments to which no
21 response is required. To the extent a response is required, Midjourney denies that this action is suitable
22 for class treatment under Rule 23 and otherwise denies the allegations in paragraph 44.

23 **E. Adequacy**

24 **45.** The allegations in paragraph 45 state legal conclusions or arguments to which no
25 response is required. To the extent a response is required, Midjourney denies that this action is suitable
26 for class treatment under Rule 23 and otherwise denies the allegations in paragraph 45.

27 **F. Other Class Considerations**

28 **46.** The allegations in paragraph 46 state legal conclusions or arguments to which no

1 response is required. To the extent a response is required, Midjourney denies that this action is suitable
2 for class treatment under Rule 23 and otherwise denies the allegations in paragraph 46.

3 **47.** The allegations in paragraph 47 state legal conclusions or arguments to which no
4 response is required. To the extent a response is deemed required, Midjourney denies that this action
5 is suitable for class treatment under Rule 23 and otherwise denies the allegations in paragraph 47.

6 **48.** The allegations in paragraph 48 state legal conclusions or arguments to which no
7 response is required. To the extent a response is deemed required, Midjourney denies that this action
8 is suitable for class treatment under Rule 23 and otherwise denies the allegations in paragraph 48.

9 **VII. ARTISTS AND THEIR WORKS**

10 **49.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
11 of the allegations in paragraph 49, and on that basis denies them.

12 **50.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
13 of the allegations in paragraph 50, and on that basis denies them.

14 **51.** The allegations in the first sentence of paragraph 51 state legal conclusions or
15 arguments to which no response is required. To the extent a response is required, Midjourney denies
16 the allegations in the first sentence of paragraph 51. Midjourney admits that the U.S. Constitution
17 contains the quoted language in the second sentence of paragraph 51, along with other text. To the
18 extent this paragraph purports to summarize or characterize the Constitution, Midjourney denies
19 Plaintiffs' characterization. Midjourney lacks knowledge and information sufficient to form a belief
20 as to the truth of the remaining allegations in paragraph 51, and on that basis denies them.

21 **52.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
22 of the allegations in paragraph 52, and on that basis denies them.

23 **53.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
24 of the allegations in paragraph 53, and on that basis denies them.

25 **54.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
26 of the allegations in paragraph 54, and on that basis denies them.

27 **55.** Midjourney denies the allegations in paragraph 55, to the extent they are directed to
28 Midjourney or the Midjourney Tools. As paragraph 55 pertains generally to unspecified "machine-

1 learning models” and not any particular model of Midjourney, Midjourney lacks knowledge and
2 information sufficient to form a belief as to the remaining allegations in paragraph 55, and on that
3 basis denies them.

4 **56.** Midjourney denies the allegations in paragraph 56, to the extent they are directed to
5 Midjourney or the Midjourney Tools. As paragraph 56 pertains to unspecified “AI image products”
6 generally and not any particular Midjourney product, Midjourney lacks knowledge and information
7 sufficient to form a belief as to the truth of those allegations, and on that basis denies them.

8 **VIII. THE SOURCE OF THE TRAINING DATASETS: LAION**

9 **57.** Midjourney admits that LAION is used as an acronym for “Large-Scale Artificial
10 Intelligence Open Network.” Except as expressly admitted, Midjourney lacks knowledge and
11 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 57, and
12 on that basis denies them.

13 **58.** Midjourney admits that LAION is well-known among researchers and developers of
14 generative AI models for image datasets, and that LAION datasets have been used by AI researchers
15 and developers to train machine-learning and generative AI models. Midjourney lacks knowledge and
16 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 58, and
17 on that basis denies them.

18 **59.** To the extent the allegations in this paragraph purport to summarize or characterize the
19 contents of the document allegedly accessible at the webpage cited in footnote 6, Midjourney denies
20 Plaintiffs’ characterization as the document speaks for itself. Midjourney lacks knowledge and
21 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 59, and
22 on that basis denies them.

23 **60.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
24 of the allegations in paragraph 60, and on that basis denies them.

25 **61.** To the extent the allegations in this paragraph purport to summarize or characterize the
26 contents of the webpage cited in footnote 7, Midjourney denies Plaintiffs’ characterization as the
27 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
28 to the truth of the remaining allegations in paragraph 61, and on that basis denies them.

1 **62.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
2 of the allegations in paragraph 62, and on that basis denies them.

3 **63.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
4 of the allegations in paragraph 63, and on that basis denies them.

5 **64.** To the extent the allegations in this paragraph purport to summarize or characterize the
6 contents of the webpages cited in footnotes 8, 9 and 10, Midjourney denies Plaintiffs' characterization
7 as those webpages speak for themselves. Midjourney lacks knowledge and information sufficient to
8 form a belief as to the truth of the remaining allegations in paragraph 64, and on that basis denies them.

9 **65.** To the extent the allegations in this paragraph purport to summarize or characterize the
10 contents of the document located at the webpage cited in footnote 11 (the "LAION-5B Paper"),
11 Midjourney denies Plaintiffs' characterization as the document speaks for itself. Midjourney lacks
12 knowledge and information sufficient to form a belief as to the truth of the remaining allegations in
13 paragraph 65, and on that basis denies them.

14 **66.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
15 of the allegations in paragraph 66, and on that basis denies them.

16 **67.** To the extent the allegations in this paragraph purport to summarize or characterize the
17 contents of the webpage cited in footnote 12, Midjourney denies Plaintiffs' characterization as the
18 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
19 to the truth of the remaining allegations in paragraph 67, and on that basis denies them.

20 **68.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
21 of the allegations in paragraph 68, and on that basis denies them.

22 **69.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
23 of the allegations in paragraph 69, and on that basis denies them.

24 **70.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
25 of the allegations in paragraph 70, and on that basis denies them.

26 **71.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
27 of the remaining allegations in paragraph 71, and on that basis denies them.

28 **72.** To the extent the allegations in this paragraph purport to summarize or characterize the

1 contents of the webpage cited at footnote 13, Midjourney denies Plaintiffs' characterization as the
2 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
3 to the truth of the remaining allegations in paragraph 72, and on that basis denies them.

4 **73.** To the extent the allegations in this paragraph purport to summarize or characterize the
5 contents of the cited webpages, Midjourney denies Plaintiffs' characterization as the webpages speak
6 for themselves. Midjourney lacks knowledge and information sufficient to form a belief as to the truth
7 of the remaining allegations in paragraph 73, and on that basis denies them.

8 **74.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
9 of the allegations in paragraph 74, and on that basis denies them.

10 **75.** To the extent the allegations in this paragraph purport to summarize or characterize the
11 contents of the cited webpage, Midjourney denies Plaintiffs' characterization as the webpage speaks
12 for itself. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
13 the remaining allegations in paragraph 75, and on that basis denies them.

14 **76.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
15 of the allegations in paragraph 76, and on that basis denies them.

16 **77.** To the extent the allegations in this paragraph purport to summarize or characterize the
17 contents of the cited webpage, Midjourney denies Plaintiffs' characterization as the webpage speaks
18 for itself. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
19 the remaining allegations in paragraph 77, and on that basis denies them.

20 **78.** To the extent the allegations in this paragraph purport to summarize or characterize the
21 contents of the cited webpage, Midjourney denies Plaintiffs' characterization as the webpage speaks
22 for itself. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
23 the remaining allegations in paragraph 78, and on that basis denies them.

24 **79.** The allegations in paragraph 79 state legal conclusions or arguments to which no
25 response is required. To the extent a response is required, Midjourney denies Plaintiffs'
26 characterization of the uncited screenshot and otherwise denies the allegations in paragraph 79.

27 **80.** To the extent the allegations in this paragraph purport to summarize or characterize the
28 contents of the webpage cited in footnote 14, Midjourney denies Plaintiffs' characterization as the

1 webpage speaks for itself. Midjourney denies all other allegations in paragraph 80.

2 **81.** To the extent the allegations in this paragraph purport to summarize or characterize the
3 contents of the video located at the webpage cited in footnote 15, Midjourney denies Plaintiffs'
4 characterization as the video speaks for itself. Midjourney lacks knowledge and information sufficient
5 to form a belief as to the truth of the remaining allegations in paragraph 81, and on that basis denies
6 them.

7 **IX. HOW AI IMAGE PRODUCTS WORK: CLIP-GUIDED DIFFUSION**

8 **82.** As paragraph 82 purports to describe generally how unspecified "CLIP-guided
9 diffusion" models work, lacks knowledge and information sufficient to form a belief as to the truth of
10 the allegations in paragraph 82, and on that basis denies them.

11 **83.** To the extent the allegations in this paragraph purport to summarize or characterize the
12 contents of the webpage cited in footnote 16, Midjourney denies Plaintiffs' characterization as the
13 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
14 to the truth of the remaining allegations in paragraph 83, and on that basis denies them.

15 **84.** To the extent the allegations in this paragraph purport to summarize or characterize the
16 contents of the document located at the webpage cited in footnote 17, Midjourney denies Plaintiffs'
17 characterization as the document speaks for itself. Midjourney lacks knowledge and information
18 sufficient to form a belief as to the truth of the remaining allegations in paragraph 84, and on that basis
19 denies them.

20 **85.** To the extent the allegations in this paragraph purport to summarize or characterize the
21 contents of the webpage cited in footnote 18, Midjourney denies Plaintiffs' characterization as the
22 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
23 to the truth of the remaining allegations in paragraph 85, and on that basis denies them.

24 **86.** Paragraph 86 does not purport to contain any allegations, therefore no response is
25 required. To the extent a response is required, Midjourney lacks knowledge and information sufficient
26 to form a belief as to the truth of the allegations in paragraph 86, and on that basis denies them.

27 **87.** To the extent the allegations in this paragraph purport to summarize or characterize the
28 contents of the document cited in footnote 18, Midjourney denies Plaintiffs' characterization as the

1 document speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief
2 as to the truth of the allegations in paragraph 87, and on that basis denies them.

3 **88.** To the extent the allegations in this paragraph purport to summarize or characterize the
4 contents of the document cited in footnote 18, Midjourney denies Plaintiffs' characterization as the
5 document speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief
6 as to the truth of the allegations in paragraph 88, and on that basis denies them.

7 **89.** Paragraph 89 does not purport to contain any allegations, therefore no response is
8 required. To the extent a response is required, Midjourney lacks knowledge and information sufficient
9 to form a belief as to the truth of the allegations in paragraph 89, and on that basis denies them.

10 **90.** To the extent the allegations in this paragraph purport to summarize or characterize the
11 contents of the document located at the webpage cited in footnote 19, Midjourney denies Plaintiffs'
12 characterization as the document speaks for itself and denies all other allegations in paragraph 90.

13 **91.** To the extent the allegations in this paragraph purport to summarize or characterize the
14 contents of the document located at the webpage cited in footnote 20, Midjourney denies Plaintiffs'
15 characterization as the document speaks for itself. Midjourney lacks knowledge and information
16 sufficient to form a belief as to the truth of the remaining allegations in paragraph 91, and on that basis
17 denies them.

18 **92.** To the extent the allegations in this paragraph purport to summarize or characterize the
19 contents of the document located at the webpage cited in footnote 20, Midjourney denies Plaintiffs'
20 characterization as the document speaks for itself. Midjourney lacks knowledge and information
21 sufficient to form a belief as to the truth of the allegations in paragraph 92, and on that basis denies
22 them.

23 **93.** To the extent the allegations in this paragraph purport to summarize or characterize the
24 contents of the document located at the webpage cited in footnote 20, Midjourney denies Plaintiffs'
25 characterization as the document speaks for itself. Midjourney lacks knowledge and information
26 sufficient to form a belief as to the truth of the allegations in paragraph 93, and on that basis denies
27 them.

28 **94.** Paragraph 94 does not purport to contain any allegations, therefore no response is

1 required. To the extent a response is required, Midjourney lacks knowledge and information sufficient
2 to form a belief as to the truth of the allegations in paragraph 94, and on that basis denies them.

3 **95.** To the extent the allegations in this paragraph purport to summarize or characterize the
4 contents of the document located at the webpage cited in footnote 20, Midjourney denies Plaintiffs'
5 characterization as the document speaks for itself. Midjourney lacks knowledge and information
6 sufficient to form a belief as to the truth of the allegations in paragraph 95, and on that basis denies
7 them.

8 **96.** To the extent the allegations in this paragraph purport to summarize or characterize the
9 contents of the document located at the webpage cited in footnote 20, Midjourney denies Plaintiffs'
10 characterization as the document speaks for itself. Midjourney lacks knowledge and information
11 sufficient to form a belief as to the truth of the allegations in paragraph 96, and on that basis denies
12 them.

13 **97.** To the extent the allegations in this paragraph purport to summarize or characterize the
14 contents of the document located at the webpage cited in footnote 20, Midjourney denies Plaintiffs'
15 characterization as the document speaks for itself. Midjourney lacks knowledge and information
16 sufficient to form a belief as to the truth of the allegations in paragraph 97, and on that basis denies
17 them.

18 **98.** To the extent the allegations in this paragraph purport to summarize or characterize the
19 contents of the document located at the webpage cited in footnote 20, Midjourney denies Plaintiffs'
20 characterization as the document speaks for itself. Midjourney lacks knowledge and information
21 sufficient to form a belief as to the truth of the allegations in paragraph 98, and on that basis denies
22 them.

23 **99.** Paragraph 99 does not purport to contain any allegations, therefore no response is
24 required. To the extent a response is required, Midjourney lacks knowledge and information sufficient
25 to form a belief as to the truth of the allegations in paragraph 99, and on that basis denies them.

26 **100.** To the extent the allegations in this paragraph purport to summarize or characterize the
27 contents of the document located at the webpage cited in footnote 20, Midjourney denies Plaintiffs'
28 characterization and denies the remaining allegations in paragraph 100.

1 **101.** To the extent the allegations in this paragraph purport to summarize or characterize the
2 contents of the document located at the webpage cited in footnote 21, Midjourney denies Plaintiffs'
3 characterization as the document speaks for itself. Midjourney lacks knowledge and information
4 sufficient to form a belief as to the truth of the remaining allegations in paragraph 101, and on that
5 basis denies them.

6 **102.** To the extent the allegations in this paragraph purport to summarize or characterize the
7 contents of the document located at the webpage cited in footnote 21, Midjourney denies Plaintiffs'
8 characterization as the document speaks for itself. Midjourney lacks knowledge and information
9 sufficient to form a belief as to the truth of the allegations in paragraph 102, and on that basis denies
10 them.

11 **103.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
12 of the allegations in paragraph 103, and on that basis denies them.

13 **104.** To the extent the allegations in this paragraph purport to summarize or characterize the
14 contents of the document located at the webpage cited in footnote 22, Midjourney denies Plaintiffs'
15 characterization the document speaks for itself. Midjourney lacks knowledge and information
16 sufficient to form a belief as to the truth of the remaining allegations in paragraph 104, and on that
17 basis denies them.

18 **105.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
19 of the allegations in paragraph 105, and on that basis denies them.

20 **106.** Midjourney lacks knowledge and information sufficient to form a belief as to
21 provenance of the images appearing in Exhibits A or B to the Complaint or the truth of the allegations
22 in paragraph 106, and on that basis denies them.

23 **107.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
24 of the allegations in paragraph 107, and on that basis denies them.

25 **108.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
26 of the allegations in paragraph 108, and on that basis denies them.

27 **109.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
28 of the allegations in paragraph 109, and on that basis denies them.

1 **110.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
2 of the allegations in paragraph 110, and on that basis denies them.

3 **111.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
4 of the allegations in paragraph 111, and on that basis denies them.

5 **112.** Midjourney denies the allegations in paragraph 112 to the extent they are directed to
6 Midjourney or the Midjourney Tools. Midjourney lacks knowledge and information sufficient to form
7 a belief as to the truth of the allegations in paragraph 112, and on that basis denies them.

8 **113.** Midjourney denies the allegations in paragraph 113 to the extent they are directed to
9 Midjourney or the Midjourney Tools. Midjourney lacks knowledge and information sufficient to form
10 a belief as to the truth of the allegations in paragraph 113, and on that basis denies them.

11 **X. PROTECTED EXPRESSION FROM TRAINING IMAGES IS COPIED, COMPRESSED,**
12 **STORED, AND INTERPOLATED BY DIFFUSION MODELS**

13 **114.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
14 of the allegations in paragraph 114, and on that basis denies them.

15 **115.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
16 of the allegations in paragraph 115, and on that basis denies them.

17 **116.** Midjourney denies the allegations in paragraph 116 to the extent they are directed to
18 Midjourney or the Midjourney Tools. Midjourney lacks knowledge and information sufficient to form
19 a belief as to the truth of the allegations in paragraph 116, and on that basis denies them.

20 **117.** To the extent the allegations in this paragraph purport to summarize or characterize the
21 contents of the webpage cited in footnote 23, Midjourney denies Plaintiffs' characterization as the
22 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
23 to the truth of the remaining allegations in paragraph 117, and on that basis denies them.

24 **118.** To the extent the allegations in this paragraph purport to summarize or characterize the
25 contents of the webpage cited in footnote 23, Midjourney denies Plaintiffs' characterization as the
26 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
27 to the truth of the remaining allegations in paragraph 118, and on that basis denies them.

28 **119.** To the extent the allegations in this paragraph purport to summarize or characterize the

1 contents of the paper located at the webpage cited in footnote 24, Midjourney denies Plaintiffs'
2 characterization as the document speaks for itself. Midjourney lacks knowledge and information
3 sufficient to form a belief as to the truth of the remaining allegations in paragraph 119, and on that
4 basis denies them.

5 **120.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
6 of the allegations in paragraph 120, and on that basis denies them.

7 **121.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
8 of the allegations in paragraph 121, and on that basis denies them.

9 **122.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
10 of the allegations in paragraph 122, and on that basis denies them.

11 **123.** To the extent the allegations in this paragraph purport to summarize or characterize the
12 contents of the webpage cited in footnote 25, Midjourney denies Plaintiffs' characterization as the
13 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
14 to the truth of the remaining allegations in paragraph 123, and on that basis denies them.

15 **124.** To the extent the allegations in this paragraph purport to summarize or characterize the
16 contents of the webpage cited in footnote 26, Midjourney denies Plaintiffs' characterization as the
17 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
18 to the truth of the remaining allegations in paragraph 124, and on that basis denies them.

19 **125.** To the extent the allegations in this paragraph purport to summarize or characterize the
20 contents of the video located at the webpage cited in footnote 27, Midjourney denies Plaintiffs'
21 characterization as the webpage speaks for itself. Midjourney lacks knowledge and information
22 sufficient to form a belief as to the truth of the remaining allegations in paragraph 125, and on that
23 basis denies them.

24 **126.** To the extent the allegations in this paragraph purport to summarize or characterize the
25 contents of the webpage cited in footnote 28, Midjourney denies Plaintiffs' characterization as the
26 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
27 to the truth of the remaining allegations in paragraph 126, and on that basis denies them.

28 **127.** To the extent the allegations in this paragraph purport to summarize or characterize the

1 contents of the webpage cited in footnote 29, Midjourney denies Plaintiffs' characterization as the
2 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
3 to the truth of the remaining allegations in paragraph 127, and on that basis denies them.

4 **128.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
5 of the allegations in paragraph 128, and on that basis denies them.

6 **129.** Midjourney denies the allegations in paragraph 129.

7 **130.** To the extent the allegations in this paragraph purport to summarize or characterize the
8 contents of the document located at the website cited in footnote 30 (the "Carlini Paper"), Midjourney
9 denies Plaintiffs' characterization as the document speaks for itself. Midjourney lacks knowledge and
10 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 130,
11 and on that basis denies them.

12 **131.** To the extent the allegations in this paragraph purport to summarize or characterize the
13 contents of the Carlini Paper, Midjourney denies Plaintiffs' characterization as the document speaks
14 for itself. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
15 the allegations in paragraph 131, and on that basis denies them.

16 **132.** To the extent the allegations in this paragraph purport to summarize or characterize the
17 contents of the Carlini Paper, Midjourney denies Plaintiffs' characterization as the document speaks
18 for itself. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
19 the allegations in paragraph 132, and on that basis denies them.

20 **133.** Paragraph 133 does not purport to contain any allegations, therefore no response is
21 required. To the extent a response is required, Midjourney lacks knowledge and information sufficient
22 to form a belief as to the truth of the allegations in paragraph 133, and on that basis denies them.

23 **134.** To the extent the allegations in this paragraph purport to summarize or characterize the
24 contents of the Carlini Paper, Midjourney denies Plaintiffs' characterization as the document speaks
25 for itself. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
26 the allegations in paragraph 134, and on that basis denies them.

27 **135.** To the extent the allegations in this paragraph purport to summarize or characterize the
28 contents of the webpage cited in footnote 31, Midjourney denies Plaintiffs' characterization as the

1 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
2 to the truth of the remaining allegations in paragraph 135, and on that basis denies them.

3 **136.** To the extent the allegations in this paragraph purport to summarize or characterize the
4 contents of the Carlini Paper, Midjourney denies Plaintiffs' characterization as the document speaks
5 for itself. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
6 the allegations in paragraph 136, and on that basis denies them.

7 **137.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
8 of the allegations in paragraph 137, and on that basis denies them.

9 **138.** To the extent the allegations in this paragraph purport to summarize or characterize the
10 contents of the document located at the webpage cited in footnote 32, Midjourney denies Plaintiffs'
11 characterization as the document speaks for itself. Midjourney lacks knowledge and information
12 sufficient to form a belief as to the truth of the remaining allegations in paragraph 138, and on that
13 basis denies them.

14 **139.** To the extent the allegations in this paragraph purport to summarize or characterize the
15 contents of the Carlini Paper, Midjourney denies Plaintiffs' characterization as the document speaks
16 for itself. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
17 the allegations in paragraph 139, and on that basis denies them.

18 **140.** To the extent the allegations in this paragraph purport to summarize or characterize the
19 contents of the Carlini Paper, Midjourney denies Plaintiffs' characterization as the document speaks
20 for itself. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
21 the allegations in paragraph 140, and on that basis denies them.

22 **141.** To the extent the allegations in this paragraph purport to summarize or characterize the
23 contents of the document located the webpage cited in footnote 33 (the "Casper Paper"), Midjourney
24 denies Plaintiffs' characterization as the document speaks for itself. Midjourney lacks knowledge and
25 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 141,
26 and on that basis denies them.

27 **142.** To the extent the allegations in this paragraph purport to summarize or characterize the
28 contents of the Casper Paper, Midjourney denies Plaintiffs' characterization as the document speaks

1 for itself. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
2 the allegations in paragraph 142, and on that basis denies them.

3 **143.** To the extent the allegations in this paragraph purport to summarize or characterize the
4 contents of the Casper Paper, Midjourney denies Plaintiffs' characterization as the document speaks
5 for itself. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
6 the allegations in paragraph 143, and on that basis denies them.

7 **144.** Midjourney denies the allegations in paragraph 144 to the extent they are directed to
8 Midjourney or the Midjourney Tools. Midjourney lacks knowledge and information sufficient to form
9 a belief as to the truth of the remaining allegations in paragraph 144, and on that basis denies them.

10 **145.** To the extent the allegations in this paragraph purport to summarize or characterize the
11 contents of the Carlini Paper, Midjourney denies Plaintiffs' characterization as the document speaks
12 for itself. Midjourney denies the allegations in paragraph 145 to the extent they are directed to
13 Midjourney or the Midjourney Tools. Midjourney lacks knowledge and information sufficient to form
14 a belief as to the truth of the remaining allegations in paragraph 145, and on that basis denies them.

15 **146.** To the extent the allegations in this paragraph purport to summarize or characterize the
16 contents of the Casper Paper, Midjourney denies Plaintiffs' characterization as the document speaks
17 for itself. Midjourney denies the allegations in paragraph 143 to the extent they are directed to
18 Midjourney or the Midjourney Tools. Midjourney lacks knowledge and information sufficient to form
19 a belief as to the truth of the remaining allegations in paragraph 146, and on that basis denies them.

20 **147.** To the extent the allegations in this paragraph purport to summarize or characterize the
21 contents of the document located at the webpage cited in footnote 34, Midjourney denies Plaintiffs'
22 characterization as the document speaks for itself. Midjourney lacks knowledge and information
23 sufficient to form a belief as to the truth of the remaining allegations in paragraph 147, and on that
24 basis denies them.

25 **148.** To the extent the allegations in this paragraph purport to summarize or characterize the
26 contents of the webpage cited in the body of paragraph 148 or in footnote 35, Midjourney denies
27 Plaintiffs' characterization as the webpages speak for themselves. Midjourney lacks knowledge and
28 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 148,

1 and on that basis denies them.

2 **149.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
3 of the allegations in paragraph 149, and on that basis denies them.

4 **150.** To the extent the allegations in this paragraph purport to summarize or characterize the
5 contents of the Casper Paper or the Carlini Paper, Midjourney denies Plaintiffs' characterization as the
6 documents speak for themselves. Midjourney denies the allegations in paragraph 150 to the extent
7 they are directed to Midjourney or the Midjourney Tools. To the extent allegations in paragraph 150
8 are directed to the models of other Defendants, Midjourney lacks knowledge and information
9 sufficient to form a belief as to the truth of those allegations, and on that basis denies them.

10 **XI. EXAMPLES OF TEXT PROMPTS USING PLAINTIFF NAMES IN AI IMAGE**
11 **PRODUCTS OFFERED BY STABILITY, RUNWAY, AND MIDJOURNEY**

12 **151.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
13 of the allegations in paragraph 151, and on that basis denies them.

14 **152.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
15 of the allegations in paragraph 152, and on that basis denies them.

16 **153.** Midjourney denies the allegations in paragraph 153 to the extent they are directed to
17 Midjourney or the Midjourney Tools. To the extent allegations in paragraph 150 are directed to the
18 models of other Defendants, Midjourney lacks knowledge and information sufficient to form a belief
19 as to the truth of those allegations, and on that basis denies them.

20 **154.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
21 of the allegations in paragraph 154, and on that basis denies them.

22 **155.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
23 of the allegations in paragraph 155, and on that basis denies them.

24 **156.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
25 of the allegations in paragraph 156, and on that basis denies them.

26 **157.** To the extent the allegations in this paragraph purport to summarize or characterize the
27 contents of the webpage cited in footnote 36, Midjourney denies Plaintiffs' characterization as the
28 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as

1 to the truth of the remaining allegations in paragraph 157, and on that basis denies them.

2 **158.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
3 of the allegations in paragraph 158, and on that basis denies them.

4 **159.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
5 of the allegations in paragraph 159, and on that basis denies them.

6 **160.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
7 of the allegations in paragraph 160, and on that basis denies them.

8 **161.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
9 of the allegations in paragraph 161, and on that basis denies them.

10 **162.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
11 of the allegations in paragraph 162, and on that basis denies them.

12 **163.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
13 of the remaining allegations in paragraph 163, and on that basis denies them.

14 **164.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
15 of the allegations in paragraph 164, and on that basis denies them.

16 **165.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
17 of the allegations in paragraph 165, and on that basis denies them.

18 **166.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
19 of the allegations in paragraph 166, and on that basis denies them.

20 **167.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
21 of the allegations in paragraph 167, and on that basis denies them.

22 **168.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
23 of the allegations in paragraph 168, and on that basis denies them.

24 **169.** Midjourney admits that the current version of the Midjourney Tools, among other
25 versions, is available through Discord (<http://discord.gg/midjourney>) and that some users may refer to
26 its platform as “Midjourney.” Midjourney denies that any version of the Midjourney Tools
27 “incorporate[d] both Stable Diffusion as an underlying model as well as a custom model trained by
28 Midjourney.” Midjourney lacks knowledge and information sufficient to form a belief as to the truth

1 of the remaining allegations in paragraph 169, and on that basis denies them.

2 **170.** Midjourney denies the allegations in the first three sentences of paragraph 170.
3 Midjourney lacks knowledge and information sufficient to form a belief as to the truth of the remaining
4 allegations in paragraph 170, and on that basis denies them.

5 **171.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
6 of the allegations in paragraph 171, and on that basis denies them.

7 **172.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
8 of the allegations in paragraph 172, and on that basis denies them.

9 **173.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
10 of the allegations in paragraph 173 as to how Plaintiffs purportedly made the images in Exhibit F, and
11 on that basis denies them. Midjourney denies the remaining allegations in paragraph 173.

12 **174.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
13 of the allegations in paragraph 174, and on that basis denies them.

14 **175.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
15 of the allegations in paragraph 175, and on that basis denies them.

16 **176.** Midjourney denies the allegations in paragraph 176.

17 **XII. EXAMPLES OF IMAGE PROMPTS USING PLAINTIFF IMAGES IN AI PRODUCTS**
18 **OFFERED BY STABILITY, RUNWAY, AND MIDJOURNEY**

19 **177.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
20 of the allegations in paragraph 177, and on that basis denies them.

21 **178.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
22 of the allegations in paragraph 178, and on that basis denies them.

23 **179.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
24 of the remaining allegations in paragraph 179, and on that basis denies them.

25 **180.** To the extent the allegations in this paragraph purport to summarize or characterize the
26 contents of the webpage cited in footnote 37, Midjourney denies Plaintiffs' characterization as the
27 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
28 to the truth of the remaining allegations in paragraph 180, and on that basis denies them.

1 **181.** To the extent the allegations in this paragraph purport to summarize or characterize the
2 contents of the webpage cited in footnote 37, Midjourney denies Plaintiffs' characterization as the
3 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
4 to the truth of the allegations in paragraph 181, and on that basis denies them.

5 **182.** To the extent the allegations in this paragraph purport to summarize or characterize the
6 contents of the Carlini Paper, Midjourney denies Plaintiffs' characterization as the document speaks
7 for itself. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
8 the allegations in paragraph 182, and on that basis denies them.

9 **183.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
10 of the allegations in paragraph 183, and on that basis denies them.

11 **184.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
12 of the allegations in paragraph 184, and on that basis denies them.

13 **185.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
14 of the allegations in paragraph 185, and on that basis denies them.

15 **186.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
16 of the allegations in paragraph 186, and on that basis denies them.

17 **187.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
18 of the allegations in paragraph 187, and on that basis denies them.

19 **188.** Midjourney admits that it announced a feature referred to as the “/blend command” on
20 or about or about January 14, 2023. To the extent the allegations in this paragraph purport to
21 summarize or characterize the contents of the webpages cited in footnotes 38 and 39, Midjourney
22 denies the characterizations as the webpages speak for themselves. Midjourney lacks knowledge and
23 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 188,
24 and on that basis denies them.

25 **189.** Midjourney denies that it “requires that an image prompt be accompanied by a text
26 prompt.” Midjourney lacks knowledge and information sufficient to form a belief as to the truth of
27 the remaining allegations in paragraph 189, and on that basis denies them.

28 **190.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth

1 of the allegations in the first sentence of paragraph 190, and on that basis denies them. Midjourney
2 denies all other allegations in paragraph 190.

3 **191.** To the extent the allegations in this paragraph purport to summarize or characterize the
4 contents of the Carlini Paper, Midjourney denies Plaintiffs' characterization as the document speaks
5 for itself. Midjourney denies the remaining allegations in paragraph 191.

6 **192.** Midjourney denies the allegations in paragraph 192.

7 **193.** Midjourney denies the allegations in paragraph 193.

8 **194.** The allegations in paragraph 194 relate to claims that have since been dismissed with
9 prejudice, therefore no response is required. To the extent a response is required, Midjourney denies
10 the allegations in paragraph 194.

11 **195.** The allegations in paragraph 195 relate to claims that have since been dismissed with
12 prejudice, therefore no response is required. To the extent a response is required, Midjourney lacks
13 knowledge and information sufficient to form a belief as to the truth of those allegations, and on that
14 basis denies them.

15 **196.** The allegations in paragraph 196 relate to claims that have since been dismissed with
16 prejudice, therefore no response is required. To the extent a response is required, Midjourney lacks
17 knowledge and information sufficient to form a belief as to the truth of those allegations, and on that
18 basis denies them.

19 **197.** The allegations in paragraph 197 relate to claims that have since been dismissed with
20 prejudice, therefore no response is required. To the extent a response is required, Midjourney lacks
21 knowledge and information sufficient to form a belief as to the truth of those allegations, and on that
22 basis denies them.

23 **198.** The allegations in paragraph 198 relate to claims that have since been dismissed with
24 prejudice, therefore no response is required. To the extent a response is required, Midjourney lacks
25 knowledge and information sufficient to form a belief as to the truth of those allegations, and on that
26 basis denies them.

27 **199.** The allegations in paragraph 199 relate to claims that have since been dismissed with
28 prejudice, therefore no response is required. To the extent a response is required, Midjourney lacks

1 knowledge and information sufficient to form a belief as to the truth of those allegations, and on that
2 basis denies them.

3 **200.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
4 of the allegations in paragraph 200, and on that basis denies them.

5 **XIII. USER AND LICENSEE ACTIVITY**

6 **201.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
7 of the allegations in paragraph 201, and on that basis denies them.

8 **202.** Midjourney admits that, on or about February 12, 2022, David Holz posted to Discord
9 a hyperlink to a Google Doc, one tab of which consisted of a list of thousands of names, including
10 those of Grzegorz Rutkowski, Sarah Andersen, Karla Ortiz, Gerald Brom, and Julia Kaye. Except as
11 expressly admitted, Midjourney denies the remaining allegations in paragraph 202 as to its own alleged
12 conduct. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of the
13 remaining allegations as to conduct by third parties, and on that basis denies them

14 **203.** To the extent the allegations in this paragraph purport to summarize or characterize the
15 contents of the webpage cited in footnote 40, Midjourney denies Plaintiffs' characterization as the
16 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
17 to the truth of the remaining allegations in paragraph 203, and on that basis denies them.

18 **204.** To the extent the allegations in this paragraph purport to summarize or characterize the
19 contents of the webpage cited in footnote 41, Midjourney denies Plaintiffs' characterization as the
20 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
21 to the truth of the remaining allegations in paragraph 204, and on that basis denies them.

22 **205.** To the extent the allegations in this paragraph purport to summarize or characterize the
23 contents of the webpage cited in footnote 42, Midjourney denies Plaintiffs' characterization as the
24 webpage speaks for itself. Midjourney lacks knowledge and information sufficient to form a belief as
25 to the truth of the remaining allegations in paragraph 205, and on that basis denies them.

26 **206.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
27 of the allegations in paragraph 206, and on that basis denies them.

28 **207.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth

1 and information sufficient to form a belief as to the truth of the allegations in paragraph 224, and on
2 that basis denies them.

3 **225.** This paragraph relates to a claim not made against Midjourney and thus no response by
4 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
5 and information sufficient to form a belief as to the truth of the allegations in paragraph 225, and on
6 that basis denies them.

7 **226.** This paragraph relates to a claim not made against Midjourney and thus no response by
8 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
9 and information sufficient to form a belief as to the truth of the allegations in paragraph 226, and on
10 that basis denies them.

11 **227.** This paragraph relates to a claim not made against Midjourney and thus no response by
12 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
13 and information sufficient to form a belief as to the truth of the allegations in paragraph 227, and on
14 that basis denies them.

15 **228.** This paragraph relates to a claim not made against Midjourney and thus no response by
16 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
17 and information sufficient to form a belief as to the truth of the allegations in paragraph 228, and on
18 that basis denies them.

19 **229.** This paragraph relates to a claim not made against Midjourney and thus no response by
20 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
21 and information sufficient to form a belief as to the truth of the allegations in paragraph 229, and on
22 that basis denies them.

23 **230.** This paragraph relates to a claim not made against Midjourney and thus no response by
24 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
25 and information sufficient to form a belief as to the truth of the allegations in paragraph 230, and on
26 that basis denies them.

27 **231.** This paragraph relates to a claim not made against Midjourney and thus no response by
28 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge

1 and information sufficient to form a belief as to the truth of the allegations in paragraph 231, and on
2 that basis denies them.

3 **COUNT TWO**

4 **232.** This paragraph relates to a claim not made against Midjourney and thus no response by
5 Midjourney is required. To the extent this paragraph calls for a response, Midjourney incorporates its
6 responses to all preceding paragraphs.

7 **233.** This paragraph relates to a claim not made against Midjourney and thus no response by
8 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
9 and information sufficient to form a belief as to the truth of the allegations in paragraph 233, and on
10 that basis denies them.

11 **234.** This paragraph relates to a claim not made against Midjourney and thus no response by
12 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
13 and information sufficient to form a belief as to the truth of the allegations in paragraph 234, and on
14 that basis denies them.

15 **235.** This paragraph relates to a claim not made against Midjourney and thus no response by
16 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
17 and information sufficient to form a belief as to the truth of the allegations in paragraph 235, and on
18 that basis denies them.

19 **236.** This paragraph relates to a claim not made against Midjourney and thus no response by
20 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
21 and information sufficient to form a belief as to the truth of the allegations in paragraph 236, and on
22 that basis denies them.

23 **237.** This paragraph relates to a claim not made against Midjourney and thus no response by
24 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
25 and information sufficient to form a belief as to the truth of the allegations in paragraph 237, and on
26 that basis denies them.

27 **COUNT THREE**

28 **238.** This paragraph relates to a claim not made against Midjourney and thus no response by

1 Midjourney is required. To the extent this paragraph calls for a response, Midjourney incorporates its
2 responses to all preceding paragraphs.

3 **239.** This paragraph relates to a claim not made against Midjourney and thus no response by
4 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
5 and information sufficient to form a belief as to the truth of the allegations in paragraph 239, and on
6 that basis denies them.

7 **240.** This paragraph relates to a claim not made against Midjourney and thus no response by
8 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
9 and information sufficient to form a belief as to the truth of the allegations in paragraph 240, and on
10 that basis denies them.

11 **241.** This paragraph relates to a claim not made against Midjourney and thus no response by
12 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
13 and information sufficient to form a belief as to the truth of the allegations in paragraph 241, and on
14 that basis denies them.

15 **242.** This paragraph relates to a claim not made against Midjourney and thus no response by
16 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
17 and information sufficient to form a belief as to the truth of the allegations in paragraph 242, and on
18 that basis denies them.

19 **243.** This paragraph relates to a claim not made against Midjourney and thus no response by
20 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
21 and information sufficient to form a belief as to the truth of the allegations in paragraph 243, and on
22 that basis denies them.

23 **244.** This paragraph relates to a claim not made against Midjourney and thus no response by
24 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
25 and information sufficient to form a belief as to the truth of the allegations in paragraph 244, and on
26 that basis denies them.

27 **245.** This paragraph relates to a claim not made against Midjourney and thus no response by
28 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge

1 and information sufficient to form a belief as to the truth of the allegations in paragraph 245, and on
2 that basis denies them.

3 **246.** This paragraph relates to a claim not made against Midjourney and thus no response by
4 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
5 and information sufficient to form a belief as to the truth of the allegations in paragraph 246, and on
6 that basis denies them.

7 **247.** This paragraph relates to a claim not made against Midjourney and thus no response by
8 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
9 and information sufficient to form a belief as to the truth of the allegations in paragraph 247, and on
10 that basis denies them.

11 **248.** This paragraph relates to a claim not made against Midjourney and thus no response by
12 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
13 and information sufficient to form a belief as to the truth of the allegations in paragraph 248, and on
14 that basis denies them.

15 **249.** This paragraph relates to a claim not made against Midjourney and thus no response by
16 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
17 and information sufficient to form a belief as to the truth of the allegations in paragraph 249, and on
18 that basis denies them.

19 **250.** This paragraph relates to a claim not made against Midjourney and thus no response by
20 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
21 and information sufficient to form a belief as to the truth of the allegations in paragraph 250, and on
22 that basis denies them.

23 **XVI. CAUSES OF ACTION AGAINST MIDJOURNEY**

24 **251.** Midjourney admits that it makes Midjourney Tools accessible to users through Discord,
25 among other means; that the Midjourney Tools enable a user to generate original content informed by
26 user prompting and a variety of other user-selected parameters; and that Midjourney communicates to
27 its users, including about the Midjourney Tools and their capabilities, through Discord, among other
28 means. Except as expressly admitted, Midjourney denies the allegations in paragraph 251.

1 **252.** Midjourney admits that it first made a version of the Midjourney Tools available to a
2 limited number of users in February 2022 and that its CEO, David Holz, has posted messages on
3 Discord regarding the Midjourney Tools. Except as expressly admitted, Midjourney denies the
4 allegations in paragraph 252.

5 **253.** To the extent the allegations in this paragraph purport to summarize or characterize the
6 contents of the Discord posts cited in footnote 44, Midjourney admits that the quoted language appears
7 in the cited posts among other language, but denies Plaintiffs' characterization and denies the
8 remaining allegations in paragraph 253.

9 **254.** To the extent the allegations in this paragraph purport to summarize or characterize the
10 contents of the Discord post and document allegedly accessible at the webpage cited in footnotes 45,
11 Midjourney admits that the quoted language appears in the cited post among other language, but denies
12 Plaintiffs' characterizations of the post. Midjourney further admits that the cited post included a link
13 to a Google Docs spreadsheet, which included a tab called "Artists" that listed thousands of names,
14 and that Midjourney and Holz have never removed the cited Discord post. Except as expressly
15 admitted, Midjourney denies the allegations in paragraph 254.

16 **255.** Midjourney admits that Plaintiffs refer to Exhibit J to the Complaint as the "Midjourney
17 Name List." Midjourney lacks knowledge and information sufficient to form a belief as to the truth
18 of the remaining allegations in paragraph 255, and on that basis denies them.

19 **256.** Midjourney admits that the names Grzegorz Rutkowski, Sarah Andersen, Karla Ortiz,
20 Gerald Brom, and Julia Kaye, among thousands of other names, appear in the Google Doc at one time
21 available at the webpage cited in footnote 46 and that Plaintiffs refer to these five individuals as the
22 "Midjourney Named Plaintiffs." Except as expressly admitted, Midjourney denies the allegations in
23 paragraph 256.

24 **257.** Midjourney denies the allegations in paragraph 257.

25 **258.** Midjourney admits that it trained version 1 of its generative AI model in the months
26 preceding February 2022, and that this training included certain data included in the LAION 400M
27 dataset. Midjourney denies that footnote 48 contains the quoted language alleged in paragraph 258
28 and otherwise denies Plaintiffs' characterization of that language. To the extent the allegations in this

1 paragraph purport to summarize or characterize the contents of the Discord posts cited in footnotes
2 47 and 49, Midjourney admits that the quoted language appears in the cited posts among other
3 language, but denies Plaintiffs' characterization of the posts and denies the remaining allegations in
4 paragraph 258.

5 **259.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
6 of the allegations in paragraph 259, and on that basis denies them.

7 **260.** The allegations in paragraph 260 state legal conclusions or arguments to which no
8 response is required. To the extent a response is required, Midjourney lacks knowledge and
9 information sufficient to form a belief as to the truth of the allegations in paragraph 260, and on that
10 basis denies them.

11 **261.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
12 of the allegations in paragraph 261, and on that basis denies them.

13 **262.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
14 of the allegations in paragraph 262, and on that basis denies them.

15 **263.** Midjourney admits that LAION-400M is an openly accessible dataset used by AI
16 researchers and developers. Except as expressly admitted, Midjourney denies the allegations in
17 paragraph 263.

18 **264.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
19 of the allegations in paragraph 264, and on that basis denies them.

20 **265.** To the extent the allegations in this paragraph purport to summarize or characterize
21 the contents of the Discord post cited in footnote 50, Midjourney lacks knowledge and information
22 sufficient to form a belief as to whether that post contains or contained the quoted language, and
23 on that basis denies same, and denies Plaintiffs' characterization of the post. Midjourney denies
24 the remaining allegations in paragraph 265.

25 **266.** To the extent the allegations in this paragraph purport to summarize or characterize the
26 contents of the Discord posts cited in footnotes 51 and 52, Midjourney admits that the quoted language
27 appears in the cited posts among other language, but denies Plaintiffs' characterization of the posts
28 and denies the remaining allegations in paragraph 266.

267. Midjourney admits that version 5 of its generative AI model was released in March of 2023. Except as expressly admitted, Midjourney denies the allegations in paragraph 267.

268. Midjourney admits that LAION-5B is an openly accessible dataset used by AI researchers and developers. Except as expressly admitted, Midjourney denies the allegations in paragraph 268.

269. Midjourney lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 269, and on that basis denies them

270. Midjourney admits that it publishes the Midjourney Magazine, which is available for purchase either through a monthly subscription or á-la-carte and which features a selection of images generated by users using Midjourney Tools. Except as expressly admitted, Midjourney denies the allegations in paragraph 270.

COUNT FOUR

271. Midjourney incorporates its responses to all preceding paragraphs.

272. The allegations in paragraph 272 state legal conclusions or arguments to which no response is required. To the extent a response is required, Midjourney denies the allegations in paragraph 272.

273. Midjourney admits that the LAION-400M dataset contains URLs and that Midjourney used data available at some of those URLs to train one or more versions of its generative AI models. The allegations in paragraph 273 otherwise state legal conclusions or arguments to which no response is required. To the extent a response is required, and except as expressly admitted, Midjourney denies all allegations in paragraph 273

274. The allegations in paragraph 274 state legal conclusions or arguments to which no response is required. To the extent a response is required, Midjourney denies the allegations in paragraph 274.

275. Midjourney denies the allegations in paragraph 275.

COUNT FIVE

276. Midjourney incorporates its responses to all preceding paragraphs.

277. This paragraph relates to a claim not made against Midjourney and thus no response by

1 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
2 and information sufficient to form a belief as to the truth of the allegations in paragraph 277, and on
3 that basis denies them.

4 **278.** Midjourney admits that the LAION-5B dataset contains URLs and that Midjourney
5 used data available at some of those URLs to train one or more versions of its generative AI models.
6 The allegations in paragraph 278 otherwise state legal conclusions or arguments to which no response
7 is required. To the extent a response is required, and except as expressly admitted, Midjourney denies
8 all allegations in paragraph 278.

9 **279.** The allegations in paragraph 279 state legal conclusions or arguments to which no
10 response is required. To the extent a response is required, Midjourney denies the allegations in
11 paragraph 279.

12 **280.** The allegations in paragraph 280 state legal conclusions or arguments to which no
13 response is required. To the extent a response is required, Midjourney denies the allegations in
14 paragraph 280.

15 **281.** Midjourney denies the allegations in paragraph 281.

16 **282.** Midjourney denies the allegations in paragraph 282.

17 **COUNT SIX**

18 **283.** Midjourney incorporates its responses to all preceding paragraphs.

19 **284.** The allegations in paragraph 284 relate to a claim that has been dismissed with
20 prejudice, therefore no response is required.

21 **285.** The allegations in paragraph 285 relate to a claim that has been dismissed with
22 prejudice, therefore no response is required.

23 **286.** The allegations in paragraph 286 relate to a claim that has been dismissed with
24 prejudice, therefore no response is required.

25 **287.** The allegations in paragraph 287 relate to a claim that has been dismissed with
26 prejudice, therefore no response is required.

27 **288.** The allegations in paragraph 288 relate to a claim that has been dismissed with
28 prejudice, therefore no response is required.

16 **296.** Midjourney incorporates its responses to all preceding paragraphs.

17 **297.** Midjourney denies the allegations in paragraph 297.

18 **298.** Midjourney denies the allegations in paragraph 298.

19 **299.** Midjourney denies the allegations in paragraph 229.

20 **300.** Midjourney denies the allegations in paragraph 300.

21 **301.** Midjourney denies the allegations in paragraph 301.

22 **302.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth

23 of the first sentence of paragraph 302 and, on that basis, denies the allegations in that sentence.

24 Midjourney denies the remaining allegations in paragraph 302.

25 **303.** Midjourney lacks knowledge or information sufficient to form a belief as to the truth

26 of the allegations in paragraph 303, and on that basis denies them.

27 **304.** Midjourney admits that it discusses the Midjourney Tools on message boards and

28 Discord and that, on or about February 12, 2022, David Holz posted to Discord a hyperlink to a Google

1 Doc, one tab of which consisted of a list of thousands of names. Midjourney lacks knowledge and
2 information sufficient to form a belief as to the truth of the allegations in paragraph 304, and on that
3 basis denies them.

4 **305.** Midjourney lacks knowledge and information sufficient to form a belief as to the truth
5 of the allegations in paragraph 305, and on that basis denies them.

6 **306.** Midjourney denies the allegations in paragraph 306.

7 **307.** Midjourney admits that it updates the features and capabilities of the Midjourney Tools
8 from time to time. Except as expressly admitted, Midjourney denies the allegations in paragraph 307.

9 **308.** Midjourney denies the allegations in paragraph 308.

10 **309.** Midjourney denies the allegations in paragraph 309.

11 **COUNT EIGHT**

12 **310.** Midjourney incorporates its responses to all preceding paragraphs.

13 **311.** The allegations in paragraph 311 state legal arguments and conclusions to which no
14 response is required. To the extent a response is required, Midjourney lacks knowledge and
15 information sufficient to form a belief as to the truth of the factual allegations in subparagraphs 311(a),
16 (b), (c), (d), and (e), and on that basis denies them. Midjourney denies all other allegations in
17 paragraph 311.

18 **312.** Midjourney denies the allegations in paragraph 312.

19 **313.** Midjourney denies the allegations in paragraph 313.

20 **314.** Midjourney denies the allegations in paragraph 314.

21 **315.** Midjourney denies the allegations in paragraph 315.

22 **316.** Midjourney lacks knowledge and information sufficient to form a belief as to the
23 allegations in the last sentence of paragraph 316, and on that basis denies them. Midjourney denies all
24 other allegations in paragraph 316.

25 **317.** To the extent the allegations in this paragraph purport to summarize or characterize
26 uncited documents, Midjourney denies Plaintiffs' characterizations. Midjourney lacks knowledge and
27 information sufficient to form a belief as to the allegations in the last sentence of paragraph 317, and
28 on that basis denies them. Midjourney denies all other allegations in paragraph 317.

1 **318.** Midjourney denies the allegations in paragraph 318.

2 **319.** The allegations in paragraph 319 state a legal conclusion to which no response is
3 required. To the extent a response is required, Midjourney denies the allegations in paragraph 319.

4 **320.** The allegations in paragraph 320 state a legal conclusion to which no response is
5 required. To the extent a response is required, Midjourney denies the allegations in paragraph 320.

6 **321.** Midjourney denies the allegations in paragraph 321.

7 **322.** Midjourney denies the allegations in paragraph 322.

8 **323.** Midjourney denies the allegations in paragraph 323.

9 **324.** Midjourney denies the allegations in paragraph 324.

10 **325.** Midjourney denies the allegations in paragraph 325.

11 **XVII. CAUSES OF ACTION AGAINST RUNWAY**

12 **326.** This paragraph relates to a claim not made against Midjourney and thus no response by
13 Midjourney is required. To the extent a response is required, Midjourney incorporates its responses to
14 all preceding paragraphs.

15 **327.** This paragraph relates to a claim not made against Midjourney and thus no response by
16 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
17 and information sufficient to form a belief as to the truth of the allegations in paragraph 327, and on
18 that basis denies them.

19 **328.** This paragraph relates to a claim not made against Midjourney and thus no response by
20 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
21 information sufficient to form a belief as to the truth of the allegations in paragraph 328, and on that
22 basis denies them.

23 **329.** This paragraph relates to a claim not made against Midjourney and thus no response by
24 Midjourney is required. To the extent this paragraph calls for a response, Midjourney lacks knowledge
25 and information sufficient to form a belief as to the truth of the allegations in paragraph 329, and on
26 that basis denies them.

27 **COUNT NINE**

28 **330.** This paragraph relates to a claim not made against Midjourney and thus no response by

1 Midjourney is required. To the extent a response is required, Midjourney incorporates its responses to
2 all preceding paragraphs.

3 **331.** This paragraph relates to a claim not made against Midjourney and thus no response by
4 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
5 information sufficient to form a belief as to the truth of the allegations in paragraph 331, and on that
6 basis denies them.

7 **332.** This paragraph relates to a claim not made against Midjourney and thus no response by
8 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
9 information sufficient to form a belief as to the truth of the allegations in paragraph 332, and on that
10 basis denies them.

11 **333.** This paragraph relates to a claim not made against Midjourney and thus no response by
12 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
13 information sufficient to form a belief as to the truth of the allegations in paragraph 333, and on that
14 basis denies them.

15 **334.** This paragraph relates to a claim not made against Midjourney and thus no response by
16 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
17 information sufficient to form a belief as to the truth of the allegations in paragraph 334, and on that
18 basis denies them.

19 **335.** This paragraph relates to a claim not made against Midjourney and thus no response by
20 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
21 information sufficient to form a belief as to the truth of the allegations in paragraph 335, and on that
22 basis denies them.

23 **336.** This paragraph relates to a claim not made against Midjourney and thus no response by
24 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
25 information sufficient to form a belief as to the truth of the allegations in paragraph 336, and on that
26 basis denies them.

27 **337.** This paragraph relates to a claim not made against Midjourney and thus no response by
28 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and

1 information sufficient to form a belief as to the truth of the allegations in paragraph 337, and on that
2 basis denies them.

3 **COUNT TEN**

4 **338.** This paragraph relates to a claim not made against Midjourney and thus no response by
5 Midjourney is required. To the extent a response is required, Midjourney incorporates its responses
6 to all preceding paragraphs.

7 **339.** This paragraph relates to a claim not made against Midjourney and thus no response by
8 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
9 information sufficient to form a belief as to the truth of the allegations in paragraph 339, and on that
10 basis denies them.

11 **340.** This paragraph relates to a claim not made against Midjourney and thus no response by
12 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
13 information sufficient to form a belief as to the truth of the allegations in paragraph 340, and on that
14 basis denies them.

15 **341.** This paragraph relates to a claim not made against Midjourney and thus no response by
16 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
17 information sufficient to form a belief as to the truth of the allegations in paragraph 341, and on that
18 basis denies them.

19 **342.** This paragraph relates to a claim not made against Midjourney and thus no response by
20 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
21 information sufficient to form a belief as to the truth of the allegations in paragraph 342, and on that
22 basis denies them.

23 **343.** This paragraph relates to a claim not made against Midjourney and thus no response by
24 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
25 information sufficient to form a belief as to the truth of the allegations in paragraph 343, and on that
26 basis denies them.

27 **COUNT ELEVEN**

28 **344.** This paragraph relates to a claim not made against Midjourney and thus no response by

1 Midjourney is required. To the extent a response is required, Midjourney incorporates its responses
2 to all preceding paragraphs.

3 **345.** This paragraph relates to a claim not made against Midjourney and thus no response by
4 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
5 information sufficient to form a belief as to the truth of the allegations in paragraph 345, and on that
6 basis denies them.

7 **346.** This paragraph relates to a claim not made against Midjourney and thus no response by
8 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
9 information sufficient to form a belief as to the truth of the allegations in paragraph 346, and on that
10 basis denies them.

11 **347.** This paragraph relates to a claim not made against Midjourney and thus no response by
12 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
13 information sufficient to form a belief as to the truth of the allegations in paragraph 347, and on that
14 basis denies them.

15 **348.** This paragraph relates to a claim not made against Midjourney and thus no response by
16 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
17 information sufficient to form a belief as to the truth of the allegations in paragraph 348, and on that
18 basis denies them.

19 **349.** This paragraph relates to a claim not made against Midjourney and thus no response by
20 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
21 information sufficient to form a belief as to the truth of the allegations in paragraph 349, and on that
22 basis denies them.

23 **350.** This paragraph relates to a claim not made against Midjourney and thus no response by
24 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
25 information sufficient to form a belief as to the truth of the allegations in paragraph 350, and on that
26 basis denies them.

27 **351.** This paragraph relates to a claim not made against Midjourney and thus no response by
28 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and

1 information sufficient to form a belief as to the truth of the allegations in paragraph 351, and on that
2 basis denies them.

3 **352.** This paragraph relates to a claim not made against Midjourney and thus no response by
4 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
5 information sufficient to form a belief as to the truth of the allegations in paragraph 352, and on that
6 basis denies them.

7 **353.** This paragraph relates to a claim not made against Midjourney and thus no response by
8 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
9 information sufficient to form a belief as to the truth of the allegations in paragraph 353, and on that
10 basis denies them.

11 **354.** This paragraph relates to a claim not made against Midjourney and thus no response by
12 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
13 information sufficient to form a belief as to the truth of the allegations in paragraph 354, and on that
14 basis denies them.

15 **355.** This paragraph relates to a claim not made against Midjourney and thus no response by
16 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
17 information sufficient to form a belief as to the truth of the allegations in paragraph 355, and on that
18 basis denies them.

19 **XVIII. CAUSES OF ACTION AGAINST DEVIANTART**

20 **356.** This paragraph relates to a claim not made against Midjourney and thus no response by
21 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
22 information sufficient to form a belief as to the truth of the allegations in paragraph 356, and on that
23 basis denies them.

24 **357.** This paragraph relates to a claim not made against Midjourney and thus no response
25 by Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
26 information sufficient to form a belief as to the truth of the allegations in paragraph 357, and on that
27 basis denies them.

28 **358.** This paragraph relates to a claim not made against Midjourney and thus no response by

1 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
2 information sufficient to form a belief as to the truth of the allegations in paragraph 358, and on that
3 basis denies them.

4 **359.** This paragraph relates to a claim not made against Midjourney and thus no response by
5 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
6 information sufficient to form a belief as to the truth of the allegations in paragraph 359, and on that
7 basis denies them.

8 **360.** This paragraph relates to a claim not made against Midjourney and thus no response by
9 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
10 information sufficient to form a belief as to the truth of the allegations in paragraph 360, and on that
11 basis denies them.

12 **361.** This paragraph relates to a claim not made against Midjourney and thus no response by
13 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
14 information sufficient to form a belief as to the truth of the allegations in paragraph 361, and on that
15 basis denies them.

16 **362.** This paragraph relates to a claim not made against Midjourney and thus no response by
17 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
18 information sufficient to form a belief as to the truth of the allegations in paragraph 362, and on that
19 basis denies them.

20 **363.** This paragraph relates to a claim not made against Midjourney and thus no response by
21 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
22 information sufficient to form a belief as to the truth of the allegations in paragraph 363, and on that
23 basis denies them.

24 **364.** This paragraph relates to a claim not made against Midjourney and thus no response by
25 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
26 information sufficient to form a belief as to the truth of the allegations in paragraph 364, and on that
27 basis denies them.

28 **365.** This paragraph relates to a claim not made against Midjourney and thus no response by

1 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
2 information sufficient to form a belief as to the truth of the allegations in paragraph 365, and on that
3 basis denies them.

4 **366.** This paragraph relates to a claim not made against Midjourney and thus no response by
5 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
6 information sufficient to form a belief as to the truth of the allegations in paragraph 366, and on that
7 basis denies them.

8 **367.** This paragraph relates to a claim not made against Midjourney and thus no response by
9 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
10 information sufficient to form a belief as to the truth of the allegations in paragraph 367, and on that
11 basis denies them.

12 **368.** This paragraph relates to a claim not made against Midjourney and thus no response by
13 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
14 information sufficient to form a belief as to the truth of the allegations in paragraph 368, and on that
15 basis denies them.

16 **369.** This paragraph relates to a claim not made against Midjourney and thus no response by
17 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
18 information sufficient to form a belief as to the truth of the allegations in paragraph 369, and on that
19 basis denies them.

20 **370.** This paragraph relates to a claim not made against Midjourney and thus no response by
21 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
22 information sufficient to form a belief as to the truth of the allegations in paragraph 370, and on that
23 basis denies them.

24 **371.** This paragraph relates to a claim not made against Midjourney and thus no response by
25 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
26 information sufficient to form a belief as to the truth of the allegations in paragraph 371, and on that
27 basis denies them.

28 **372.** This paragraph relates to a claim not made against Midjourney and thus no response by

1 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
2 information sufficient to form a belief as to the truth of the allegations in paragraph 372, and on that
3 basis denies them.

4 **373.** This paragraph relates to a claim not made against Midjourney and thus no response by
5 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
6 information sufficient to form a belief as to the truth of the allegations in paragraph 373, and on that
7 basis denies them.

8 **374.** This paragraph relates to a claim not made against Midjourney and thus no response by
9 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
10 information sufficient to form a belief as to the truth of the allegations in paragraph 374, and on that
11 basis denies them.

12 **375.** This paragraph relates to a claim not made against Midjourney and thus no response by
13 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
14 information sufficient to form a belief as to the truth of the allegations in paragraph 375, and on that
15 basis denies them.

16 **376.** This paragraph relates to a claim not made against Midjourney and thus no response by
17 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
18 information sufficient to form a belief as to the truth of the allegations in paragraph 376, and on that
19 basis denies them.

20 **377.** This paragraph relates to a claim not made against Midjourney and thus no response by
21 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
22 information sufficient to form a belief as to the truth of the allegations in paragraph 377, and on that
23 basis denies them.

24 **378.** This paragraph relates to a claim not made against Midjourney and thus no response by
25 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
26 information sufficient to form a belief as to the truth of the allegations in paragraph 378, and on that
27 basis denies them.

28 **379.** This paragraph relates to a claim not made against Midjourney and thus no response by

1 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
2 information sufficient to form a belief as to the truth of the allegations in paragraph 379, and on that
3 basis denies them.

4 **380.** This paragraph relates to a claim not made against Midjourney and thus no response by
5 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
6 information sufficient to form a belief as to the truth of the allegations in paragraph 380, and on that
7 basis denies them.

8 **381.** This paragraph relates to a claim not made against Midjourney and thus no response by
9 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
10 information sufficient to form a belief as to the truth of the allegations in paragraph 381, and on that
11 basis denies them.

12 **382.** This paragraph relates to a claim not made against Midjourney and thus no response by
13 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
14 information sufficient to form a belief as to the truth of the allegations in paragraph 382, and on that
15 basis denies them.

16 **383.** This paragraph relates to a claim not made against Midjourney and thus no response by
17 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
18 information sufficient to form a belief as to the truth of the allegations in paragraph 383, and on that
19 basis denies them.

20 **384.** This paragraph relates to a claim not made against Midjourney and thus no response by
21 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
22 information sufficient to form a belief as to the truth of the allegations in paragraph 384, and on that
23 basis denies them.

24 **385.** This paragraph relates to a claim not made against Midjourney and thus no response by
25 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
26 information sufficient to form a belief as to the truth of the allegations in paragraph 385, and on that
27 basis denies them.

28 **386.** This paragraph relates to a claim not made against Midjourney and thus no response by

1 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
2 information sufficient to form a belief as to the truth of the allegations in paragraph 386, and on that
3 basis denies them.

4 **COUNT TWELVE**

5 **387.** This paragraph relates to a claim not made against Midjourney and thus no response by
6 Midjourney is required. To the extent a response is required, Midjourney incorporates its responses
7 to all preceding paragraphs.

8 **388.** This paragraph relates to a claim not made against Midjourney and thus no response by
9 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
10 information sufficient to form a belief as to the truth of the allegations in paragraph 388, and on that
11 basis denies them.

12 **389.** This paragraph relates to a claim not made against Midjourney and thus no response by
13 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
14 information sufficient to form a belief as to the truth of the allegations in paragraph 389, and on that
15 basis denies them.

16 **390.** This paragraph relates to a claim not made against Midjourney and thus no response by
17 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
18 information sufficient to form a belief as to the truth of the allegations in paragraph 390, and on that
19 basis denies them.

20 **391.** This paragraph relates to a claim not made against Midjourney and thus no response by
21 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
22 information sufficient to form a belief as to the truth of the allegations in paragraph 391, and on that
23 basis denies them.

24 **392.** This paragraph relates to a claim not made against Midjourney and thus no response by
25 Midjourney is required. To the extent a response is required, Midjourney lacks knowledge and
26 information sufficient to form a belief as to the truth of the allegations in paragraph 392, and on that
27 basis denies them.
28

1 **AFFIRMATIVE DEFENSES**

2 Midjourney asserts that Plaintiffs' claims against it in the SAC (Counts Four through Eight,
3 inclusive), are barred, in whole or in part, by the defenses set forth below. By setting forth these
4 defenses, Midjourney does not assume the burden of proving any fact, issue, or element of a cause of
5 action as to which Plaintiffs bear the burden of proof. Midjourney reserves the right to plead any other
6 defenses that may be evident or revealed after further investigation and discovery in this case, and
7 hereby reserves the right to amend its Answer to assert any such defenses.

8 **FIRST AFFIRMATIVE DEFENSE**

9 Plaintiffs lack valid copyright registrations for some or all of the works at issue and therefore
10 lack standing to assert copyright claims based on those works under 17 U.S.C. § 411(a).

11 **SECOND AFFIRMATIVE DEFENSE**

12 To the extent that Midjourney made use or copies of all or any portion Plaintiffs' copyrighted
13 works or any alleged protected expression therein to train its generative AI models, such conduct
14 constituted fair use under 17 U.S.C. § 107.

15 **THIRD AFFIRMATIVE DEFENSE**

16 Midjourney's alleged conduct amounted to use of information that is excluded from U.S.
17 copyright protection under 17 U.S.C. § 102(b).

18 **FOURTH AFFIRMATIVE DEFENSE**

19 To the extent that Midjourney made use or copies of all or any portion Plaintiffs' copyrighted
20 works or any alleged protected expression therein to train its generative AI models, that copying was
21 de minimis.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 To the extent that Midjourney made use or copies of all or any portion Plaintiffs' copyrighted
24 works or any alleged protected expression therein to train its generative AI models, such conduct was
25 authorized by express or implied license.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 Plaintiffs allege infringement with respect to millions or billions of images allegedly included
28 in the LAION-400M and LAION-5B datasets. To the extent those datasets include works in the public

1 domain; unregistered works; works to which copyright protection has been abandoned; works that
2 lack requisite originality to qualify for copyright protection; works that are not subject to copyright
3 protection under the doctrines of merger, scènes à faire; works that are not protectible under 17 U.S.C.
4 § 102(b) or that are otherwise unprotectable under the law; works that were not properly registered or
5 renewed with the U.S. Copyright Office, provided improper notice, and/or did not comply with
6 registration requirements and/or with other necessary formalities, Midjourney reserves its right to
7 defend against Plaintiffs' claims on any or all of these grounds.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 Plaintiffs lack standing to enforce any alleged copyright interests because they do not own the
10 copyright (or one or more of the exclusive rights afforded under 17 U.S.C. § 106) to some or all of the
11 at-issue works.

12 **EIGHTH AFFIRMATIVE DEFENSE**

13 Plaintiffs cannot show that their names serve as a designation of source of their works or that
14 Midjourney's alleged use of their names caused a "likelihood of confusion" under the Lanham Act.

15 **NINTH AFFIRMATIVE DEFENSE**

16 Midjourney's alleged use of Plaintiffs' names was protected under the First Amendment.

17 **TENTH AFFIRMATIVE DEFENSE**

18 Midjourney's alleged use of Plaintiffs' names constituted nominative fair use.

19 **ELEVENTH AFFIRMATIVE DEFENSE**

20 Plaintiffs do not own any enforceable rights with respect to their asserted trade dress.

21 **TWELVETH AFFIRMATIVE DEFENSE**

22 Plaintiffs asserted trade dress elements are functional and lack "secondary meaning" under the
23 Lanham Act.

24 **THIRTEENTH AFFIRMATIVE DEFENSE**

25 Plaintiffs' Lanham Act claims are barred by the equitable doctrines of laches, estoppel and
26 unclean hands.

27 **FOURTEENTH AFFIRMATIVE DEFENSE**

28 Plaintiffs have not sustained any harm, losses, damages, injury, or detriment, of any kind as a

1 result of Midjourney's purported violations of the Copyright Act or the Lanham Act.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

3 Plaintiffs are not entitled to recover treble damages, punitive damages or attorney's fees under
4 the Lanham Act, or any other law that authorizes such relief.

5 **SIXTEENTH AFFIRMATIVE DEFENSE**

6 Plaintiffs are barred from obtaining any preliminary or permanent injunctive relief because,
7 among other things, Plaintiffs (1) have no protectable trade dress; (2) are not likely to prevail on the
8 merits of their claims, (3) have not (and will not) suffer any irreparable harm as a result of
9 Midjourney's conduct, (4) have an adequate remedy at law if they were to prevail in this action, and
10 (5) cannot satisfy their burden of showing that the public interest would be served by entry of an
11 injunction against Midjourney.

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

13 Plaintiffs are not entitled to any relief because they failed to mitigate their alleged harm and
14 damages.

15 **EIGHTEENTH AFFIRMATIVE DEFENSE**

16 Plaintiffs are not entitled to any relief for alleged infringement of their asserted trade dress
17 because art styles are not protected under the Lanham Act.

18 **NINETEENTH AFFIRMATIVE DEFENSE**

19 Plaintiffs' claims fail, in whole or in part, because Plaintiffs have failed to state a claim upon
20 which relief may be granted

21 **TWENTIETH AFFIRMATIVE DEFENSE**

22 Plaintiffs' claims fail, in whole or in part, because Midjourney has not infringed Plaintiffs'
23 alleged copyrighted works.

1 Dated: December 6, 2024

Respectfully Submitted,

3 /s/ Angela L. Dunning

4 Angela L. Dunning (212047)
adunning@cgsh.com
5 CLEARY GOTTLIEB STEEN
& HAMILTON LLP
6 1841 Page Mill Rd Suite 250
Palo Alto, CA 94304
7 Tel: +1 (650) 815-4100