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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 CHRISTOPHER J. CORDOVA,)
10)

11 Plaintiff,)

12 vs.)

13 JONATHAN HUDON-HUNEULT,)
14 NNEKA OHIRI, 14693663 CANADA INC.,)

15 Defendants.)

) Case Number: 5:25-cv-04685-VKD

) **REQUEST FOR JUDICIAL NOTICE AND**
) **INCORPORATION BY REFERENCE IN**
) **SUPPORT OF DEFENDANTS’**
) **OPPOSITION TO PLAINTIFF’S**
) **MOTION TO DISMISS**
) **COUNTERCLAIM (DKT. NO: 64)**

) **Judge:** Magistrate Judge Virginia K.
) Demarchi

) **Complaint Filed:** June 3, 2025

) **Trial Date:** February 1-2, 2027 (Bench Trial)

) **Hearing on Motion:** March 3, 2026 (vacated
) on February 6, 2026 and motion will be
) decided on the papers – Dkt. No. 77).

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REQUEST FOR JUDICIAL NOTICE AND INCORPORATION BY REFERENCE IN
SUPPORT OF DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION TO DISMISS
COUNTERCLAIM (DKT. NO: 64); Case Number: 5:25-cv-04685-VKD

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1 **I. Exhibit A – YouTube Terms of Service**

2 The YouTube Terms of Service (which are posted online) are subject to judicial notice
 3 because they are “not subject to reasonable dispute” and their “accuracy cannot reasonably be
 4 questioned.” *Khoja*, 899 F.3d at 999 (quoting Fed. R. Evid. 201(b)(1)–(2)). Because the
 5 contractual terms “are publicly available, standard documents that are capable of ready and
 6 accurate determination,” *Opperman v. Path*, 84 F. Supp. 3d 962, 976 (N.D. Cal. 2015), courts
 7 routinely find that “[p]ublic terms of service and privacy policies are proper subjects of
 8 judicial notice,” which is another basis to consider the YouTube Terms of Service in ruling
 9 on the Plaintiff’s Motion to Dismiss the Counterclaim, *In re Zoom Video Comm’s Inc. Priv.*
 10 *Litig.*, 525 F. Supp. 3d 1017, 1026 n.2 (N.D. Cal. Mar. 11, 2021) (judicially noticing online
 11 terms of service); see also *Coffee v. Google, LLC*, No. 20-CV-03901-BLF, 2021 WL 493387,
 12 at *3 (N.D. Cal. Feb. 10, 2021) (noticing Google's terms of service), *Datel Holdings Ltd. v.*
 13 *Microsoft Corp.*, 712 F. Supp. 2d 974, 984 (N.D. Cal. 2010) (taking judicial notice of the
 14 Xbox Terms of Use); *Wible v. Aetna Life Ins. Co.*, 375 F.Supp.2d 956, 965-66 (C.D.Cal.2005)
 15 (taking judicial notice of admissions on a website associated with a witness as well as the
 16 contents of Amazon.com web pages describing books related to the case)

17 Other courts in other districts took have similarly judicial notice of the same YouTube
 18 Terms of Service in very similar circumstances. *Richardson v. Townsquare Media, Inc.*, No.
 19 24 Civ. 4217 (AKH), 2025 WL 89191 at *4 (S.D.N.Y. Jan 14, 2025 - appeal filed Feb. 7,
 20 2025); *Olson v. iHeartMedia, Inc.*, No. SA-24-CV-00627-XR. (WD Texas, Aug 7, 2025); see
 21 also *McGucken v. Newsweek LLC*, 464 F. Supp. 3d 594, 600 n.2 (S.D.N.Y. 2020) (taking
 22 judicial notice of Instagram's publicly available Terms of Use on a motion to dismiss).

23 **II. Exhibit B - YouTube DMCA Takedown Notice Form**

24 In the Order on Defendants’ Motion to Dismiss (Dckt . 65) at p. 6, this Court stated
 25 “[a]lthough that doctrine [incorporation by reference] might warrant consideration of the
 26 DMCA counternotices referenced in the FAC [First Amended Complaint]...” The same

1 reasoning should apply here, that it might warrant consideration of the DMCA takedown
2 notices referenced in the Counterclaim Dkt. No. 58 ¶ 21, see also Dkt. No. 39 ¶ 58 where the
3 Plaintiff himself pleaded that he had sent 12 DMCA takedown notices against the Defendants'
4 videos. Since the Counterclaim expressly pleaded that the Plaintiff had filed DMCA takedown
5 notice forms, the DMCA takedown notice forms should be considered incorporated by
6 reference.

7 Moreover, it would also be a reasonable inference that those DMCA takedown notices
8 that the Plaintiff has filed included the necessary statement under 17 U.S. Code §
9 512(c)(3)(A)(v), which explicitly provides that a DMCA takedown notice must include “[a]
10 *statement that the complaining party has a good faith belief that use of the material in the*
11 *manner complained of is not authorized by the copyright owner, its agent, or the law.*”).

12 In any event, this Court can take judicial notice of YouTube’s standard form DMCA
13 takedown form, for similar reasons as the YouTube Terms of Service. The court can take
14 judicial notice of webpages of this nature. *In re NVIDIA GPU Litig.*, 2009 WL 4020104 at *8
15 (N.D.Cal. Nov. 19, 2009) (taking judicial notice of certain documents (including web pages)).

16 **III. Exhibit C - YouTube DMCA Counternotice Form**

17 In the Order on Defendants’ Motion to Dismiss (Dckt . 65) at p. 6, this Court stated
18 “[a]lthough that doctrine [incorporation by reference] might warrant consideration of the
19 DMCA counternotices referenced in the FAC [First Amended Complaint]...” The same
20 reasoning should apply here, that it might warrant consideration of the DMCA counternotice
21 notices referenced in the Counterclaim. Since the Counterclaim expressly pleaded that the
22 Defendants had filed DMCA counternotice forms, the DMCA counternotice forms should be
23 considered incorporated by reference.

24 In any event, the Defendants submit that this Court can take judicial notice of YouTube’s
25 standard form DMCA counternotice form, for similar reasons as the YouTube Terms of
26 Service and/or YouTube’s DMCA takedown notice form.

CONCLUSION

For the foregoing reasons, Defendants respectfully requests that the Court consider Exhibits A to C of the concurrently filed Declaration of Simon Lin in its adjudication of Plaintiff's Motion to Dismiss Counterclaim.

Date: February 20, 2026

Respectfully submitted,

By: Simon Lin

Simon Lin – State Bar No. 313661