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6 *Nneka Ohiri, and 14693663 Canada Inc.*

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

) **DEFENDANTS’ OBJECTION TO REPLY**
) **EVIDENCE RE: PLAINTIFF’S MOTION**
) **TO DISMISS COUNTERCLAIM, L.R. 7-**
) **3(D)(1)**

) **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).

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rule 7-3(d)(1), Jonathan Hudon-Huneault, Nneka Ohiri, and
3 14693663 Canada Inc. (the “**Defendant(s)**”) respectfully objects to new evidence and new
4 issues referred to by Christopher J. Cordova (the “**Plaintiff**”) in his Reply in support of his
5 Motion to Dismiss Counterclaim (Dkt. 84, the “**Reply**”).

6 On February 27, 2026, Plaintiff filed his Reply and referred to new evidence (below) that
7 was not in his opening papers, and are both irrelevant and also constitute improper reply
8 evidence:

- 9 1. Lines 18-21 of page 3 of the Reply asserting that “*YouTube provides no feature*
10 *that allows users to download, copy, edit, and re- upload another creator’s videos*
11 *as new works...*”¹
- 12 2. Lines 18-21 of page 2 of the Reply asserting that “*The ToS do not grant users a*
13 *general right to download, copy, edit, and re- upload other creators’ videos...*”²
- 14 3. Last paragraph in page 3 of the Reply referring to Declaration of Jonathan
15 Huneault dated November 24, 2025, ECF No. 43-2.

16 **II. LEGAL STANDARD FOR OBJECTION**

17 Under Civil Local Rule 7-3(d)(1):

18 [I]f new evidence has been submitted in the reply, the opposing party may file
19 within 7 days after the reply is filed, and serve an Objection to Reply Evidence,
20 which may not exceed 5 pages of text, stating its objections to the new evidence,
which may not include further argument on the motion.

21 This Rule is intended to “recognize the potential inequities that might flow from the
22 injection of new matter at the last round of briefing.” *Rojas v. Bosch Solar Energy Corp.*, No.
23 18-CV-05841-BLF, 2021 WL 12331659, at *1 (N.D. Cal. Nov. 23, 2021) (sustaining
24

25
26 ¹ This is an attempt to introduce new evidence in reply by way of a legal submission. Plaintiff
makes this bald assertion about YouTube’s features to avoid filing a supplemental declaration.

² Same as footnote #1 above.

1 objection to reply evidence on motion for class certification) (citing and quoting *Dutta v. State*
 2 *Farm Mut. Auto. Ins. Co.*, 895 F.3d 1166, 1171-72 (9th Cir. 2018)). Under this Rule, Courts
 3 in this District reject reply evidence that could have been included in the original motion but
 4 was not. *Visier, Inc. v. iCIMS, Inc.*, No. 24-CV-07544-SVK, 2025 WL 589036, at *2 (N.D.
 5 Cal. Feb. 24, 2025) (sustaining objection to reply evidence) (citing *Coleman v. Quaker Oats*
 6 *Co.*, 232 F.3d 1271, 1289 n. 4 (9th Cir.2000) (“[I]ssues cannot be **raised for the first time in**
 7 **a reply brief.**”) [emphasis added] and *Tovar v. U.S. Postal Serv.*, 3 F.3d 1271, 1273 n. 3 (9th
 8 Cir.1993) (“To the extent that the [reply] brief **presents new information**, it is improper.”)).
 9 [emphasis added]

10 **III. DEFENDANTS’ OBJECTION**

11 Defendants object to the new information that Plaintiff introduced for the first time in his
 12 Reply (i.e., the assertion that YouTube does not have a feature for download; or that
 13 YouTube’s Terms of Service does not permit any downloading). Plaintiff’s introduction of
 14 this information/issue for the first time in reply is unfair and prejudicial. *Coleman v. Quaker*
 15 *Oats Co.*, 232 F.3d 1271, 1289 n. 4 (9th Cir.2000) (“[I]ssues cannot be **raised for the first**
 16 **time in a reply brief.**”) [emphasis added] and *Tovar v. U.S. Postal Serv.*, 3 F.3d 1271, 1273
 17 n. 3 (9th Cir.1993) (“To the extent that the [reply] brief **presents new information**, it is
 18 improper.”)). [emphasis added]

19 Had the Plaintiff argued in his opening papers that YouTube did not permit downloading
 20 of videos, the Defendants would have included a printout of YouTube’s **premium** service,
 21 which would have squarely rebutted the Plaintiff’s bald assertion.

22 Defendants also object to Plaintiff’s reliance on the Declaration of Jonathan Huneault
 23 dated November 24, 2025 in the Reply for two reasons. Firstly, it is in the nature of new
 24 information that should have been introduced in the opening papers. Secondly, and most
 25 importantly, this Declaration is also being relied upon to invite the Court to conclusively
 26 decide a new issue in an evidentiary vacuum on this motion to dismiss, without any
 opportunity for Defendants to respond. The issue being injected into the debate in the Reply

1 is the interpretation of the phrase “only as *enabled* by a feature of the Service (*such as* video
2 playback or embeds)...” [emphasis added] in the YouTube Terms of Service. What features
3 YouTube has and what is “enabled” are all highly fact driven issues.

4 Thus, Defendants respectfully submit that this Court should sustain this objection. And
5 to the extent the Plaintiff files a response to this objection or seeks leave to file a response to
6 this objection, this Court should reject that as well. *Rojas*, 2021 WL 12331659 at *1 (“*This*
7 *district's Civil Local Rules do not contemplate a response to an objection to reply evidence.*”).

8
9 **IV. CONCLUSION**

10 For the foregoing reasons, this Court should sustain Defendants’ Objection and disregard
11 the paragraphs identified in lines 9-15 of Page 1 above. Alternatively, the Defendants should
12 be granted leave to file sur-reply evidence and a sur-reply brief.

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14 Date: March 3, 2026
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Respectfully submitted,
By: Simon Lin
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