

1 COOLEY LLP  
BOBBY GHAJAR (198719)  
2 (bghajar@cooley.com)  
TERESA MICHAUD (296329)  
3 (tmichaud@cooley.com)  
COLETTE GHAZARIAN (322235)  
4 (cghazarian@cooley.com)  
1333 2nd Street, Suite 400  
5 Santa Monica, California 90401  
Telephone: (310) 883-6400

6 MARK WEINSTEIN (193043)  
7 (mweinstein@cooley.com)  
KATHLEEN HARTNETT (314267)  
8 (khartnett@cooley.com)  
JUDD LAUTER (290945)  
9 (jlauter@cooley.com)  
ELIZABETH L. STAMESHKIN (260865)  
10 (lstameshkin@cooley.com)  
3175 Hanover Street  
11 Palo Alto, CA 94304-1130  
Telephone: (650) 843-5000

12 CLEARY GOTTLIEB STEEN & HAMILTON LLP  
13 ANGELA L. DUNNING (212047)  
(adunning@cgsh.com)  
14 1841 Page Mill Road, Suite 250  
Palo Alto, CA 94304  
15 Telephone: (650) 815-4131

16 *[Full Listing on Signature Page]*  
17 *Counsel for Defendant Meta Platforms, Inc.*

18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**  
20 **SAN FRANCISCO DIVISION**

21 RICHARD KADREY, *et al.*,  
22 Individual and Representative Plaintiffs,  
23 v.  
24 META PLATFORMS, INC., a Delaware  
25 corporation;  
26 Defendant.

Case No. 3:23-cv-03417-VC-TSH  
**DEFENDANT META PLATFORMS, INC.’S  
REPLY IN SUPPORT OF MOTION TO  
DISMISS PLAINTIFFS’ THIRD AMENDED  
COMPLAINT (RULES 12(B)(1) AND 12(B)(6))**

Date: February 27, 2025  
Time: 10:00 a.m.  
Dept: Courtroom 4 – 17th Floor  
Judge: Vince Chhabria

Trial Date: None  
Date Action Filed: July 7, 2023

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1 **I. INTRODUCTION**

2 Meta’s Motion established that Plaintiffs lack standing and cannot state a claim for violation  
3 of Section 1202(b)(1) of the DMCA or the CDAFA. Focused on “torrenting,” which is a widely-  
4 used protocol to download large files, Plaintiffs push a narrative that ignores evidence in their  
5 possession, including a detailed expert report, showing that Meta took precautions not to “seed”  
6 any downloaded files. Plaintiffs, thus, plead no facts to show that Meta seeded Plaintiffs’ books –  
7 a claim that Meta will address at summary judgment. For now, the Court should dismiss Plaintiffs’  
8 unprecedented and untenable application of both Section 1202(b)(1) and the CDAFA to the  
9 allegations in the TAC.

10 Mere removal of redundant information from training data, including copyright  
11 management information (“CMI”) in the form of boilerplate legal disclaimers or the copyright  
12 symbol, is not a violation of Section 1202(b)(1) of the DMCA. To survive dismissal, Plaintiffs  
13 were required to plausibly plead facts showing that Meta removed CMI with knowledge or reason  
14 to know that it would “induce, enable, facilitate, or conceal” infringement of Plaintiffs’ copyrighted  
15 works. They still cannot so – despite exhaustive discovery – because their allegations don’t add  
16 up. They cannot show that CMI removal enabled or concealed infringement by third parties (no  
17 such infringement is even alleged). They also do not allege any facts showing that CMI removal  
18 enabled or concealed any infringement by Meta, whose public disclosure of Llama’s training data  
19 prompted this copyright infringement suit. Separately, their Opposition confirms that Plaintiffs  
20 cannot allege a concrete or particularized injury caused by the supposed violation of Section  
21 1202(b)(1), warranting dismissal with prejudice for lack of standing.

22 The CDAFA claim is equally defective: under Plaintiffs’ framing, one could bring a  
23 CDAFA claim for *any* infringement of copyrighted works downloaded from the internet, from  
24 merely printing an image from a public Google search, to downloading large files through other  
25 means. The statute simply does not cover the conduct Plaintiffs challenge here. Instead, as the  
26 Opposition confirms, the facts underlying Plaintiffs’ CDAFA claim are coextensive with their  
27 claim for copyright infringement – both solely target Meta’s alleged copying of their books to train  
28 AI models. Plaintiffs’ CDAFA *claim* (not the entire statute) is preempted and must be dismissed.

1 **II. PLAINTIFFS’ SECTION 1202(B)(1) CLAIM FAILS AS A MATTER OF LAW**

2 **A. Plaintiffs Lack Article III and Statutory Standing**

3 Plaintiffs do not dispute that the TAC includes only a single, conclusory allegation that they  
4 have suffered an unspecified injury as a result of Meta’s alleged CMI removal. TAC ¶ 109. In an  
5 attempt to cure this defect, they impute the allegations of harm from their copyright infringement  
6 claim to the DMCA claim, and conflate the *remedy* of unjust enrichment with an *injury* capable of  
7 conferring standing. For the reasons discussed below, both arguments fail.

8 Plaintiffs argue that the “concrete” injury they have suffered is “the same right copyright  
9 holders enjoy, and it’s the same injury copyright infringement creates.” Opp. at 3. This exact  
10 argument was rejected by the court in *Raw Story* because copyright infringement and Section 1202  
11 protect different interests. *Raw Story Media, Inc. v. OpenAI, Inc.*, 2024 WL 4711729, at \*3  
12 (S.D.N.Y. Nov. 7, 2024).<sup>1</sup> In particular, the “legislative history of the DMCA indicates that the  
13 Act’s purpose was not to guard against property-based injury. Rather, it was to ‘ensure the integrity  
14 of the electronic marketplace by preventing fraud and misinformation,’ and to bring the United  
15 States into compliance with its obligations to do so under the World Intellectual Property  
16 Organization (WIPO) Copyright Treaty, art. 12(1) (‘Obligations concerning Rights Management  
17 Information’) and WIPO Performances and Phonograms Treaty, art. 19 (same).” *Id.* (citing H.R.  
18 Rep. No. 105-551, at 10-11). This is reflected in numerous district court decisions and legal  
19 scholarship recognizing Section 1202 as addressing attribution-related harms. *See, e.g., Kirk Kara*  
20 *Corp. v. W. Stone & Metal Corp.*, 2020 WL 5991503, at \*6 (C.D. Cal. Aug. 14, 2020) (explaining  
21 that CMI is intended to “assist in tracking and monitoring uses of copyrighted works, as well as  
22 licensing of rights and indicating attribution, creation and ownership.”) (quoting 4 NIMMER ON  
23 COPYRIGHT § 12A.08 (2019)); *Textile Secrets Int’l, Inc. v. Ya-Ya Brand Inc.*, 524 F. Supp. 2d 1184,  
24 1199 (C.D. Cal. 2007) (same); Russell W. Jacobs, *Copyright Fraud in the Internet Age*, 13 COLUM.  
25 SCI. & TECH. L. REV. 97, 146 (2012) (“CMI protections [are] analogous to a limited right of  
26 integrity or attribution”). Plaintiffs needed to plead an attribution-based injury, but did not do so.

27 <sup>1</sup> Plaintiffs cite to *The Intercept Media v. OpenAI*, No. 24-cv-1515, Dkt. 122 (S.D.N.Y. Nov. 21,  
28 2024) for having reached the opposite conclusion on similar facts. However, the court’s order  
denying OpenAI’s motion to dismiss is unaccompanied by any legal analysis.

1           *Even if* Plaintiffs were correct that, for standing purposes, injuries from violations of Section  
2 1202(b) are akin to copyright infringement, the TAC is still devoid of factual allegations connecting  
3 Meta’s actions to any such injury. Plaintiffs speculate that “Meta stripped CMI to ensure that  
4 Plaintiffs and others can’t query its models to determine whether they were trained on certain  
5 copyrighted works (or reveal obvious evidence of the same, such as a © symbol).” Opp. at 7. They  
6 know this is false based on the factual record. Nonetheless, the TAC contains no allegations that  
7 anyone has ever attempted such a query, or that any answers given by Llama in response would  
8 have been different *but for* the removal of CMI, let alone that such removal induced or facilitated  
9 infringement, or concealed from Plaintiffs that Meta used their works to train its models. To the  
10 contrary, Plaintiffs’ original Complaint was premised on Meta’s public disclosure in its Llama 1  
11 paper that it had used the “Books3” dataset. Dkt. 1 ¶¶ 23–30; *see also* TAC ¶¶ 37, 39–42, 46.  
12 Plaintiffs also received extensive disclosures on the training data used for later models in discovery.  
13 *See e.g.*, Dkt. 267-12 (August discovery responses identifying training datasets). Plaintiffs’ theory  
14 that Meta removed CMI to conceal that it used their works to train Llama is nonsensical and  
15 contradicted by the record.

16           Plaintiffs’ alternative argument, that they have alleged an injury akin to ***unjust enrichment***,  
17 also fails. First, Plaintiffs do not allege that Meta unjustly benefitted *as a result* of its purported  
18 Section 1202 violation, nor could they. As noted above, removing CMI did not enable or conceal  
19 any conduct Plaintiffs were not already aware of. Second, Plaintiffs conflate unjust enrichment,  
20 which is a remedy (*see* Opp. at 3, quoting 17 U.S.C. § 1203(c)(2)), with injury, but these are distinct  
21 concepts. *See Locklin v. StriVectin Operating Co.*, 2022 WL 867248, at \*3 (N.D. Cal. Mar. 23,  
22 2022) (Chhabria, J.) (“no standalone claim for ‘unjust enrichment’ in California”) (citation omitted).  
23 As the Supreme Court explained in *TransUnion LLC v. Ramirez*, “[o]nly those plaintiffs who have  
24 been *concretely harmed* by a defendant’s statutory violation may sue ....” 594 U.S. 413, 426–27  
25 (2021) (emphasis in original). Plaintiffs’ reliance on *In re Facebook, Inc. Internet Tracking*  
26 *Litigation*, 956 F.3d 589, 599-600 (9th Cir. 2020) is, thus, misplaced, as the “the Article III analysis  
27 in [the unjust enrichment] section of [that decision] has been superseded by *TransUnion*[.]” *McClung*  
28 *v. AddShopper, Inc.*, 2024 WL 189006, at \*2, n. 2 (N.D. Cal. Jan. 17, 2024) (Chhabria, J.).



1           **B. Plaintiffs Also Fail to State a Claim under §1202(b)(1)**

2           The TAC lacks any plausible allegations that Meta knew or had reasonable grounds to know  
3 that removing CMI from training data would “induce, enable, facilitate, or conceal an infringement  
4 of” *Plaintiffs’ books*. 17 U.S.C. § 1202(b). *See Stevens v. Corelogic, Inc.*, 899 F.3d 666, 675 (9th  
5 Cir. 2018). Instead of addressing this facial defect, Plaintiffs falsely accuse Meta of obfuscation  
6 and misleading the Court. These tactics fail.

7           **First**, Plaintiffs do not respond to the observation in Meta’s Motion that they did not plead  
8 facts showing that Meta knew or had reason to know that removal of CMI “would induce, enable,  
9 facilitate, or conceal ... the copyright infringement *of others*.” Mot. at 14 (citing TAC ¶ 108)  
10 (emphasis added). Accordingly, this defect is conceded. *See Brodsky v. Apple Inc.*, 445 F. Supp.  
11 3d 110, 122 (N.D. Cal. 2020) (failure “to address arguments... constitutes abandonment”).

12           **Second**, Plaintiffs argue that the Motion both ignores allegations that CMI removal was  
13 intended “to enable and facilitate infringement” by *Meta* (TAC ¶ 105), and concedes that CMI  
14 removal “facilitates” infringement by making training easier. Opp. at 6. Neither is true. Nowhere  
15 do Plaintiffs allege that CMI removal *enabled* (*i.e.*, made possible) Meta’s alleged infringement,  
16 nor could they. The premise of Plaintiffs’ DMCA claim is that Meta removed Plaintiffs’ CMI *after*  
17 it had already infringed their works by downloading them. CMI removal could not have “enabled  
18 or facilitated” this conduct.<sup>2</sup> Moreover, although they loosely characterize CMI removal as  
19 “facilitating” Meta’s “use” of training data by making it easier for models to “ingest” (*see* TAC at  
20 ¶ 88, 90), improving the utility of training data is not the same thing as making it easier to *copy*  
21 (*i.e.*, to infringe). There is no allegation of the latter. Thus, Plaintiffs have not plausibly alleged  
22 that Meta’s CMI removal enabled or facilitated *infringement*, let alone that it was undertaken with  
23 culpable scienter. *See Stevens*, 899 F.3d at 675 (Section 1202 requires a defendant to know or have  
24 a reasonable basis to know that CMI removal “*will aid infringement*”) (emphasis in original).<sup>3</sup>

25 \_\_\_\_\_  
26 <sup>2</sup> To the extent Plaintiffs now argue that removal of CMI supposedly made it easier for Meta to  
create additional training copies of Plaintiffs’ books after it downloaded them, this, too, is illogical.  
Obviously, removal of a few lines of text from a large file doesn’t make it easier to reproduce.

27 <sup>3</sup> The decisions cited by Plaintiffs (Opp. at 8) are inapposite. In each, the plaintiffs pleaded facts  
28 plausibly showing that the defendant possessed the relevant mental state. For example, *Beijing  
Meishe Network Technology Co. v. TikTok Inc.* concerned allegations that the defendant “removed  
CMI from source code that it then distributed” *under its own name*, which is consistent with

1           **Third**, as the Opposition clarifies, Plaintiffs’ concealment theory is premised on allegations  
2 that Meta removed CMI from training data to prevent others from querying its models about what  
3 they were trained on. Opp. at 7. But this still makes no sense. Plaintiffs do not, and cannot, allege  
4 that but for the CMI removal, Llama would have revealed this information. They do not allege that  
5 anyone ever entered such a query, or what comes out when they do, even though Plaintiffs and their  
6 experts have had access to Meta’s open source models for 18 months. Plaintiffs’ conjecture aside,  
7 they also do not (and cannot) allege that CMI removal somehow stymied *them* from learning what  
8 Meta used to train. Again, the original complaint (including a DMCA claim for CMI removal) was  
9 premised on Meta’s voluntary disclosure of its use of Books3 (Dkt. 1; TAC ¶ 39); and by the time  
10 Meta allegedly started using other datasets, the parties were already deep in discovery during which  
11 Meta produced the at-issue datasets and source code to Plaintiffs. TAC ¶¶ 84, 87-88; Dkt. 267 at  
12 30-32 (explaining the timeline of Meta’s production of books-related datasets to Plaintiffs).  
13 Against this backdrop, it is implausible that Meta removed CMI from training data with intent to  
14 “conceal” from Plaintiffs the alleged infringement that Plaintiffs had *already sued Meta over*.

15           Plaintiffs offer no substantive response. Instead, they deflect from the TAC’s incoherence  
16 and lack of supporting factual detail by making false accusations about Meta’s conduct in discovery  
17 – none of which help them state a plausible claim. Opp. at 9. First, they point out that Judge Hixson  
18 ordered Meta to produce additional documents concerning CMI removal, if any, on December 20,  
19 after fact discovery closed. *Id.* at 7. Never mind that they received extensive discovery concerning  
20 Meta’s dataset processing long before December 20, including the scripts used for the alleged CMI  
21 removal, as well as the documents and testimony cited by Plaintiffs in that motion to compel (Dkt.  
22 301-7) and in their motion for leave to file the TAC (Dkt. 395 at 3-4). Plaintiffs even represented  
23 on *November 27, 2024* that “prosecution of [the Section 1202 claim] will not require ... additional  
24 discovery beyond what is needed for the copyright infringement claim.” Dkt. 395 at 1. They cannot  
25 now tactically retreat from their prior representations to the Court. Elsewhere, Plaintiffs falsely

26 \_\_\_\_\_  
27 culpable sciemer. 2024 WL 3522196, at \*8 (N.D. Cal. July 23, 2024). Plaintiffs do not plausibly  
28 allege culpable sciemer here because the allegations in the TAC are contradictory or otherwise  
implausible. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“[a] claim has facial plausibility  
when the plaintiff pleads factual content [allowing] ... reasonable inference [of liability].”)

1 accuse Meta of having “fought to shield [] datasets from production,” and only produced them  
2 “after Court intervention.” Opp. at 9. But the datasets used to train Llama 1 and 2 were among the  
3 first materials Meta produced in discovery in May 2024 (*see* Dkt. 267 at 30), and it produced other  
4 books-related datasets used for more recent Llama models in August 2024. *Id.* at 30-32. None of  
5 this was precipitated by Court order and, in fact, Plaintiffs’ motion to compel as to additional datasets  
6 was *denied*. Dkt. 288 at 5. These arguments cannot save their untenable claim from dismissal.

### 7 **III. PLAINTIFFS’ CDAFA CLAIM FAILS AS A MATTER OF LAW**

8 Plaintiffs’ Opposition similarly exposes the deficiencies in their CDAFA claim. Their  
9 framing of the claim as one “grounded in Meta’s *illegal acquisition* of Plaintiffs’ copyrighted  
10 works” (Opp. at 9) underscores that it is merely copyright infringement by another name and is  
11 therefore preempted, as courts have consistently held in like circumstances. Mot. at 12.  
12 Significantly, Plaintiffs do not cite to a single case in which a court allowed a CDAFA claim on  
13 facts similar to those alleged here. Instead, Plaintiffs rely on inapt and distinguishable case law in  
14 a failed attempt to shoehorn their copyright infringement allegations under the CDAFA.

#### 15 **A. The Copyright Act Preempts Plaintiffs’ CDAFA Claim**

16 Plaintiffs’ Opposition attempts to distinguish Meta’s *acquisition* of Plaintiffs’ works from  
17 its alleged *reproduction* (i.e. copying) of those works, to argue that their CDAFA claim concerns  
18 different subject matter and conduct. Opp. at 9. But this is a distinction without a difference. Meta  
19 allegedly “acquired” Plaintiffs’ copyrighted books by making digital copies of them from the  
20 Internet (TAC ¶¶ 86–87), conduct that falls squarely within the purview of the Copyright Act.

21 *First*, Plaintiffs acknowledge that the “data” at-issue in their CDAFA claims is their  
22 copyrighted works (Opp. at 9), effectively conceding that “the subject matter of the [CDAFA] claim  
23 falls within the subject matter of copyright[.]” *Maloney v. T3Media, Inc.*, 853 F.3d 1004, 1010 (9th  
24 Cir. 2017) (cleaned up). Because the same copyrighted works underlie both claims, the first part  
25 of the preemption test is satisfied. *Id.*

26 *Second*, Meta’s alleged “acquisition” of Plaintiffs’ copyrighted works is not “qualitatively  
27 different” from its reproduction of those works. The CDAFA section of the TAC replaces the terms  
28 “downloaded” and “made [] copies” with “accessed and used” (TAC ¶¶ 98, 111), but wordsmithing

1 aside, both are premised solely on Meta’s alleged copying of Plaintiffs’ copyrighted works without  
 2 consent. *See* Opp. at 10. To the extent the CDAFA claim is also premised on speculation that Meta  
 3 distributed their works while torrenting (TAC ¶ 101), “distribution,” like “reproduction,” is an  
 4 enumerated exclusive right under the Copyright Act. 17 U.S.C. § 106(3). Thus, “the underlying  
 5 nature of” Plaintiffs’ CDAFA claim is “part and parcel of [their] copyright claim.” *Laws v. Sony*  
 6 *Music Entm’t, Inc.*, 448 F.3d 1134, 1144 (9th Cir. 2006).

7 Contrary to Plaintiffs’ mischaracterization (Opp. at 11), courts have **not** sustained CDAFA  
 8 and copyright claims premised on the same conduct. For instance, in *Hidden Empire Holdings,*  
 9 *LLC v. Angelone*, the CDAFA claim was based on defendants’ denying access to plaintiffs’ email,  
 10 social media, and website accounts, while the copyright claim arose from infringement of a video  
 11 game. 2022 WL 17080131, at \*7, \*12 (C.D. Cal. Sep. 30, 2022). In *DocMagic, Inc. v. Ellie Mae,*  
 12 *Inc.*, the conduct supporting the CDAFA claim (“use of other parties’ license keys and ‘pre-textual’  
 13 log-in credentials” to access Ellie Mae servers) was distinct from that forming the basis for the  
 14 copyright claim (unauthorized copying/distribution of software). 745 F. Supp. 2d 1119, 1151 (N.D.  
 15 Cal. 2010). And in *Ticketmaster, LLC v. Prestige Entertainment West, Inc.*, the CDAFA claim  
 16 concerned use of prohibited bots to purchase tickets from Ticketmaster, while the copyright claim  
 17 was based on unauthorized downloading of copyrighted webpages and code to develop those bots.  
 18 315 F. Supp. 3d 1147, 1161-62, 1176 (C.D. Cal. 2018). These cases involved conduct distinct from  
 19 copyright infringement, did not even address preemption, and do not help Plaintiffs avoid it here.<sup>4</sup>

20 Plaintiffs also cite cases *outside* of the CDAFA context to evade preemption (Opp. at 12),  
 21 but the parties have been down this road before. *See* Dkt. 40 at 10 (distinguishing *Altera* and  
 22 *Rasmussen*).<sup>5</sup> *Opperman v. Path, Inc.*, 84 F. Supp. 3d 962 (N.D. Cal. 2015), is likewise no help to

23 \_\_\_\_\_  
 24 <sup>4</sup> As anticipated and explained in Meta’s Motion (at p. 13), *Capitol Audio Access, Inc. v. Umemoto*  
 25 (Opp. at 11) is distinguishable because that case involved unauthorized access to payment- and  
 26 password-protected portions of the *plaintiff’s* website “in direct contravention of the User License  
 27 and User Agreement.” 980 F. Supp. 2d 1154, 1156 (E.D. Cal. 2013) (citation omitted). It was not  
 28 premised, as Plaintiffs’ CDAFA claim is here, solely on the copying of copyrighted content.

<sup>5</sup> *Altera Corp. v. Clear Logic, Inc.* addressed whether the plaintiff’s contractual right to control the  
 use of information generated by users of its software was preempted, 424 F.3d 1079, 1090–91 (9th  
 Cir. 2005), and *G.S. Rasmussen & Assoc., Inc. v. Kalitta Flying Service, Inc.* concerned a state law  
 conversion claim regarding unauthorized use of an FAA-issued certificate (not subject to copyright  
 protection), 958 F.2d 896, 904 (9th Cir. 1992). The allegations here are readily distinguishable.

1 Plaintiffs. *Opperman* involved a conventional CDAFA claim targeting unauthorized access to  
2 plaintiffs' address book information, by apps installed on their phones, and there was no copyright  
3 claim (or preemption) because, unlike here, the data at issue admittedly did not fall within the scope  
4 of copyright protection. *Id.* at 972, 989. The CDAFA claim here is preempted.

5 **B. The Notice Requirement Under Fed. R. Civ. P. Rule 5.1 Is Inapplicable**

6 Rule 5.1 applies where a party calls into "question the constitutionality" of a state statute.  
7 It is head scratching that Plaintiffs would cite Rule 5.1 here (Opp. at 12), as Meta does not challenge  
8 the constitutionality of CDAFA, or even seek a ruling that the *statute* is preempted. Instead, Meta's  
9 motion established that *Plaintiffs' specific claim under the CDAFA* is preempted by copyright law.  
10 Rule 5.1 does not speak to this scenario, and States need not weigh in on every wayward plaintiff's  
11 decision to plead state law claims expressly reserved for adjudication under federal causes of action.

12 Numerous courts, including this one, have dismissed state law claims as preempted by the  
13 Copyright Act without requiring Rule 5.1 notice. *E.g.*, ECF 56 at 3 (finding copyright preemption  
14 *in this case*); *X Corp. v. Bright Data, Ltd.*, 733 F. Supp. 3d 832, 853 (N.D. Cal. 2024) (dismissing  
15 as preempted claim for breach of terms premised on scraping from public website because "the  
16 extent to which public data may be freely copied from social media platforms . . . should generally  
17 be governed by the Copyright Act"); *Andersen v. Stability AI Ltd.*, 2024 WL 3823234, at \*10  
18 (dismissing unjust enrichment claim as preempted). Not surprisingly, Plaintiffs do not cite a single  
19 case in which a court has refused to find copyright preemption of a state statutory claim for lack of  
20 Rule 5.1 notice. Instead, Plaintiffs cite cases considering conflict preemption arguments outside of  
21 the copyright context, none of which supports a finding that Rule 5.1 notice was required here.

22 Even in the unrelated context of the cases cited by Plaintiffs, courts hold that Rule 5.1 is not  
23 triggered on a federal preemption argument because "preemption in this context is not a  
24 constitutional issue"; "although preemption has its doctrinal base in the Constitution, the question  
25 is largely one of determining the compatibility of a state and federal statutory scheme." *Skau v.*  
26 *JBS Carriers, Inc.*, 2019 WL 4597516, at \*1 (W.D. Wash. Sept. 23, 2019) (quoting *Knudsen Corp*  
27 *v. Nevada State Dairy Comm'n*, 676 F.2d 374, 377 (9th Cir. 1982)); *see also United States v. Zadeh*,  
28 820 F.3d 746, 754-55 (5th Cir. 2016) (state interests protected by Rule 5.1 are "not as sharply

1 defined” where a federal court is not asked to “strike down a state law completely,” but merely to  
 2 hold that it does not apply in a given circumstance). Plaintiffs’ misguided attempt to avoid  
 3 copyright preemption based on an invented and unsupported reading of Rule 5.1 must be rejected.<sup>6</sup>

4 **C. The TAC Fails to State a Claim Under Section 502(c)(2)**

5 The same distinctions on which Plaintiffs rely to argue that the CDAFA claim is not  
 6 preempted only reinforce that it is otherwise legally untenable. Plaintiffs concede that CDAFA is  
 7 an “anti-intrusion” statute, not a misappropriation statute. *See* Opp. at 9 (quoting *hiQ Labs, Inc. v.*  
 8 *LinkedIn Corp.*, 31 F.4th 1180, 1196 (9th Cir. 2022)). Yet the TAC fails to allege any “intrusion”  
 9 upon Plaintiffs, their computer systems, or their data. Plaintiffs have and claim no ownership or  
 10 control (or even use) of the third-party platforms, websites, accounts, and datasets that Meta  
 11 allegedly accessed. The only “possessory interest” Plaintiffs argue they have in the content Meta  
 12 downloaded is their copyright rights. *See supra* III.A. *Frasco v. Flo Health, Inc.*, 2024 WL  
 13 4280933 (N.D. Cal. Sep. 23, 2024) is inapposite. Opp. at 13. There, the plaintiffs alleged that  
 14 Google collected “their private health information” from an app to which *the plaintiffs* provided  
 15 their information and to which Google had back-door access through a software developer kit. 2024  
 16 WL 4280933, at \*1. Here, Plaintiffs do not allege that Meta employed technological measures to  
 17 obtain any data *from Plaintiffs* or that the data was subject to any access restrictions. They allege  
 18 only that Meta downloaded the data from a “well-known online repository” that was publicly  
 19 available via torrents.<sup>7</sup> TAC ¶¶ 86–87. *Doe I v. Google LLC* is similarly unhelpful to Plaintiffs;  
 20 there, the court dismissed the CDAFA claim for lack of standing because the plaintiffs failed to  
 21 allege sufficient loss. 741 F. Supp. 3d, 828, 836, 846–47 (N.D. Cal. 2024).<sup>8</sup>

22 \_\_\_\_\_  
 23 <sup>6</sup> Plaintiffs’ cited cases are inapt. This case is not like *ThermoLife International LLC v. NeoGenis*  
 24 *Labs Inc.*, where a litigant is “rais[ing] a preemption challenge to a state statute” (and even then  
 25 was merely encouraged to provide notice). 2020 WL 6395442 at \*15 (D. Ariz. Nov. 2, 2020).  
 26 Likewise, in *Douglas v. ReconTrust Co., N.A.*, the court granted a motion to dismiss on the merits,  
 27 remarking: “putting [Rule 5.1] aside, a court should avoid questions of constitutional dimension  
 28 where other legal grounds will resolve a controversy.” 2012 WL 5470360, at \*4 (W.D. Wash.  
 2012). Notably, the same judge who decided *Douglas* later held in *Skau* that Rule 5.1 is *not*  
 implicated in preemption cases. 2019 WL 4597516, at \*1.

<sup>7</sup> Contrary to Plaintiffs’ assertion, there is nothing “independently illegal” about torrenting on its  
 own. Opp. at 10. Torrenting is merely a means of enabling users to download (*i.e.*, copy) files.

<sup>8</sup> As Meta explained (Mot. at 14), *Biden v. Ziegler*, 737 F. Supp. 3d 958 (C.D. Cal. 2024) is readily  
 distinguishable. It was undisputed that the plaintiff owned and controlled the set of files at issue,

1 While CDAFA may not require *circumventing* technical barriers, some barrier to access is  
2 always contemplated. In *West v. Ronquillo-Morgan*, for instance, the defendant obtained the  
3 plaintiff’s log-in information for her social media accounts and devices; they were not freely  
4 accessible. 526 F. Supp. 3d 737, 739 (C.D. Cal. 2020). Any other interpretation would be  
5 impermissibly broad. Indeed, if Plaintiffs’ theory were accepted, then anyone who prints or  
6 downloads any copyrighted image or text from any public website without the copyright holder’s  
7 permission would violate CDAFA. That is not what the statute was designed to prevent, and  
8 Plaintiffs’ inability to cite any case applying CDAFA to similar facts is, thus, not surprising.

9 Finally, Plaintiffs’ attempt to articulate injury only serves to underscore that the CDAFA  
10 claim is preempted. The only “harm” they describe is lost revenue from book licensing (Opp. at  
11 14), which is the same harm they assert in support of their copyright claim (TAC ¶ 101). Further,  
12 the “investigative costs” they claim as “consequential losses” – to “determine how Meta acquired  
13 their copyrighted works, where Meta [allegedly] shared that data, and how it used that data for  
14 itself” – are asserted in support of their *copyright* claim. Opp. at 15. And Plaintiffs’ cited cases  
15 are unavailing. Each involved personal data – not intellectual property – that the claimants created  
16 while using defendants’ platforms. See *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589,  
17 599 (9th Cir. 2020) (browsing histories); *Brown v. Google LLC*, 685 F. Supp. 3d 909, 920 (N.D.  
18 Cal. 2023) (same); *Rodriguez v. Google LLC*, 2025 WL 50425, at \*1 (N.D. Cal. Jan. 7, 2025)  
19 (search activity). Here, in contrast, Meta allegedly accessed and downloaded datasets that Plaintiffs  
20 did not create, containing the text of published books that anyone can read in a public library, from  
21 public websites Plaintiffs do not operate or own. Moreover, Plaintiffs could not have spent money  
22 to “investigate or verify whether [their] . . . data was or was not altered, damaged, or deleted”  
23 because the “data” was not theirs to begin with, and their copyrighted works remain distinct and  
24 intact. See CACI No. 1814. Thus, Plaintiffs have not plausibly alleged a violation of CDAFA.

#### 25 **IV. CONCLUSION**

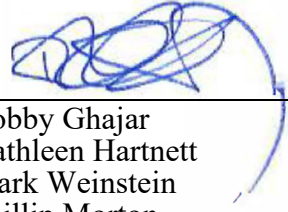
26 Plaintiffs’ DMCA Section 1202(b)(1) and CDAFA claims should be dismissed with prejudice.

27 \_\_\_\_\_  
28 and the plaintiff alleged that the defendants “used his passwords to access password-protected files  
and ignored prelitigation demands to cease and desist[.]” *Id.* at 976 (emphasis added).

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Dated: February 18, 2025

COOLEY LLP

By:   
Bobby Ghajar  
Kathleen Hartnett  
Mark Weinstein  
Phillip Morton  
Judd Lauter  
Liz Stameshkin  
Matthew Brigham  
Colette Ghazarian

CLEARY GOTTLIEB STEEN &  
HAMILTON LLP

Angela L. Dunning

Attorneys for Defendant  
META PLATFORMS, INC.

*Full Counsel List*

COOLEY LLP  
PHILLIP MORTON (*pro hac vice*)  
(pmorton@cooley.com)  
COLE A. POPPELL (*pro hac vice*)  
(cpoppell@cooley.com)  
1299 Pennsylvania Avenue, NW, Suite 700  
Washington, DC 20004-2400  
Telephone: (202) 842-7800

COOLEY LLP  
MATTHEW BRIGHAM (191428)  
(mbrigham@cooley.com)  
JUAN PABLO GONZALEZ (334470)  
(jgonzalez@cooley.com)  
3175 Hanover Street  
Palo Alto, CA 94304-1130  
Telephone: (650) 843-5000