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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

RAPID RELIEF TEAM (RRT) LTD., Plaintiff and Counterclaim-Defendant, vs. CHERYL BAWTINHEIMER, Defendant and Counterclaim-Plaintiff. vs. BROWN RUDNICK LLP, KATY-JADE CHURCH, and MICHAEL GRAIF, Counterclaim-Defendants.	Case No. 4:25-cv-10864-JST HON. JON S. TIGAR **COUNTERCLAIM-DEFENDANTS RAPID RELIEF TEAM (RRT) LTD. AND BROWN RUDNICK LLP'S OBJECTION TO REPLY EVIDENCE** DATE: June 18, 2026 TIME: 2:00 p.m. CTRM: Courtroom 6 – 2nd Floor Action Filed: Dec. 19, 2025 Am. Complaint Filed: Jan. 30, 2026

Pursuant to N.D. Cal. L. Civ. R. 7-3(d), Plaintiff/Counterclaim-Defendant Rapid Relief Team (RRT) Ltd. ("RRT") and Counterclaim-Defendant Brown Rudnick LLP ("Brown Rudnick") (collectively, "Counterclaim-Defendants") hereby object to Exhibits 2, 3, 8, and 9 and footnotes 11-13 of the reply that Defendant/Counterclaim-Plaintiff Cheryl Bawtinheimer ("Bawtinheimer") submitted in support of her motion for a preliminary injunction (ECF No. 36; "Reply").

I. Objections to Reply Exhibits 2, 3, and 9

Counterclaim-Defendants object to Reply Exhibits 2, 3, and 9 (ECF Nos. 36-2, 36-3, 36-9) on the grounds that they are (A) beyond the scope of proper reply, (B) inadmissible hearsay under Fed. R. Evid. 801-802, and (C) not relevant under Fed. R. Evid. 401-402.

Reply Exhibit 2 is a new Declaration from Bawtinheimer ("Reply Declaration") in which she, among other statements, describes some of the other exhibits to her Reply, including, Exhibits 3 and 9. ECF No. 36-2 at ¶¶ 8-9 (describing Exhibit 3), ¶¶ 17-18 (describing Exhibit 9).

Reply Exhibits 3 and 9 are purportedly compilations of messages from listeners to Bawtinheimer's podcast. *Id.*; ECF Nos. 36-3, 36-9. Bawtinheimer states in her Reply Declaration that Exhibits 3 and 9 show that listeners "use [her] podcast as a lifeline." ECF No. 36-2 at ¶¶ 8, 17. She also states a purported belief that an "especially dire consequence" of not getting an injunction would be felt by listeners "whose only lifeline is [her] Get-a-Life Podcast." *Id.* at ¶ 19.

Bawtinheimer's Reply cites Exhibits 3 and 9, and corresponding paragraphs of her Reply Declaration, as *new* support for her irreparable harm argument. ECF No. 36 at 10-11. The Reply also cites Exhibit 2, ¶¶ 8-9, and Exhibit 3 in the Reply's "Factual Background" section. ECF No. 36 at 2.

A. Reply Exhibits 2, 3 and 9 Are Beyond the Scope of Proper Reply

Reply Exhibits 2, 3, and 9 improperly contain new matter that was not presented in Bawtinheimer's opening motion submission (ECF No. 27) and that is not responsive

to arguments or evidence presented in Counterclaim-Defendants' opposition (ECF No. 31).

"Generally, 'reply briefs are limited in scope to matters either raised by the opposition or unforeseen at the time of the original motion.'" *Townsend v. Monster Beverage Corp.*, 303 F. Supp. 3d 1010, 1027 (C.D. Cal. 2018) (quoting *Burnham v. City of Rohnert Park*, 1992 WL 672965, at *1 n. 2 (N.D. Cal. May 18, 1992). "A party may not raise new matter in a Reply brief." *Grimes v. Barber*, No. 09-cv-411, 2009 WL 5062348, at *5 (N.D. Cal. Dec. 23, 2009); *see also Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) ("The district court need not consider arguments raised for the first time in a reply brief."). "'New evidence submitted as part of a reply is improper' because it does not allow the defendant an adequate opportunity to respond." *Townsend*, 303 F. Supp. 3d at 1027 (quoting *Morris v. Guetta*, No. LA CV12-00684 JAK, 2013 WL 440127, at *8 (C.D. Cal. Feb. 4, 2013)).

As the alleged irreparable harm in her opening brief, Bawtinheimer argued that removal of her videos from YouTube "limited her ability to spread public awareness … and to foster support …"; "stifled information available about RRT and the PBCC"; and gave her "a reasonable fear that Counterclaim-Defendants will continue to do this for any video she posts about RRT or the PBCC …, which would be disastrous to her mission …" ECF No. 27 at 21-22 (citing Bawtinheimer Decl., ECF 27-3, at ¶¶ 18-19). In other words, the irreparable harm that Bawtinheimer alleged in her opening submission was focused on how removal of her videos negatively impacted ***her***.

In Bawtinheimer's Reply, however, she additionally relies on Reply Exhibits 2, 3, and 9 to support a new, previously unasserted irreparable harm argument that "the irreparable harm is ***also visited upon the broader community***," asserting that many of her listeners "have written to Bawtinheimer to express how her podcast is a lifeline to them" and that the "loss of the audience for whom she creates her content … would be an especially dire consequence" for listeners "whose only lifeline is" her podcast. ECF 36 at 10-11 (emphasis added). None of this was in Bawtinheimer's opening motion

submission. *See* ECF No. 27 at 21-22.

Bawtinheimer has no justifiable basis for submitting this new irreparable harm argument and evidence for the first time only in her Reply. Bawtinheimer's newly propounded listener-lifeline argument and evidence is not responsive to anything Counterclaim-Defendants argued in their opposition (*see* ECF No. 31 at 9-14), nor has Bawtinheimer contended that her new position was unknown or unforeseeable when she filed her preliminary injunction motion. Thus, Bawtinheimer's new irreparable harm argument and evidence are beyond the scope of proper reply.

Bawtinheimer's reliance on Exhibit 2, ¶¶ 8-9, and Exhibit 3 in the Reply's "Factual Background" section is also not justified. The Reply's "Factual Background" is not responsive to Counterclaim-Defendants' opposition (*see* ECF No. 31 at 3-6); and it is unclear why Bawtinheimer even included it in the Reply, given the extensive, ten-page "Factual Background" she provided in her opening brief (ECF 27 No. at 2-12).

Accordingly, Reply Exhibits 2 (¶¶ 8-9 and 17-19), 3 and 9, and the parts of Bawtinheimer's Reply relying thereon, constitute improper reply and should not be considered by this Court.

B. Reply Exhibits 2, 3 and 9 Contain Inadmissible Hearsay

In addition to being beyond the scope of proper reply, Reply Exhibits 3 and 9, and the corresponding paragraphs of Reply Exhibit 2, contain inadmissible hearsay. Fed. R. Evid. 801, 802. Reply Exhibits 3 and 9 are out-of-court statements purportedly from listeners to Bawtinheimer's podcast that Bawtinheimer relies on in her Reply and Reply Declaration for the truth of the matter asserted—*e.g.*, that some of her listeners use her podcast as a lifeline. Should the Court ultimately decide to consider these exhibits at the preliminary injunction stage, their hearsay status should limit the weight, if any, the Court affords them. By propounding the new evidence for the first time in her Reply, Counterclaim-Defendants were denied any opportunity to provide counterevidence to the hearsay statements by virtue of the rules prohibiting any further filings. N.D. Cal. L. Civ. R. 7-3(d).

C. Reply Exhibits 2, 3 and 9 Are Not Relevant

"Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. "Irrelevant evidence is not admissible." Fed. R. Evid. 402. The alleged fact that some of Bawtinheimer's listeners could become upset if YouTube were to take down her podcast (ECF No. 36-2 at ¶¶ 8, 17, 19) is not relevant to the issues before the Court, as the denial of the requested preliminary injunction would not result in YouTube taking down her podcast. Thus, Reply Exhibits 2 (¶¶ 8-9 and 17-19), 3 and 9 are ultimately not relevant and are inadmissible.

II. Objections to Reply Exhibit 8 and Reply Footnotes 11-13

Counterclaim-Defendants object to Reply Exhibit 8 (ECF Nos. 36-8) and footnotes 11-13 of Bawtinheimer's Reply (ECF No. 36 at 7) on the ground that they, and Bawtinheimer's Reply arguments based thereon, (A) lack foundation and are wholly speculative (Fed. R. Evid. 602), and (B) are unduly prejudicial (Fed. R. Evid. 403).

In the Reply, Bawtinheimer asserts as follows:

> Brown Rudnick understands the concept of using a company's logo when discussing that company. *See* B&R blog posts displaying NCAA logo,[11] UniCredit logo,[12] and Alaska Airlines logo, **Exhibit 8.**[13] Are they violating the designers' copyrights? Of course not.

ECF No. 36 at 7 (citing footnotes 11-13).

Reply Exhibit 8 and the websites whose URLs are provided in footnotes 11-13 are blog posts from *BRiefings*, a Brown Rudnick legal blog. Each of these blog posts includes a stock image. For example, the blog post reflected in Reply Exhibit 8 (also footnote 13) includes a stock image of an Alaska Airlines jet. Bawtinheimer improperly (and wrongly) suggests in her Reply, without any foundational basis

whatsoever, that the stock images included in those blog posts are unlicensed and used without authorization, and that Brown Rudnick's only basis for using them is fair use. Such unwarranted speculation improperly precludes the possibility of licensed use.

Bawtinheimer's reliance on the blog posts to support a wholly speculative argument is improper and unduly prejudicial. The blog posts and Bawtinheimer's related arguments should not be considered by this Court.

CONCLUSION

For all of the foregoing reasons, Counterclaim-Defendants request that the Court sustain these objections to Bawtinheimer's Reply and strike the objected-to portions of her Reply submission. To the extent the Court does not sustain these objections, Counterclaim-Defendants respectfully requests leave to file a sur-reply.

DATED: May 4, 2026

Respectfully submitted,

BROWN RUDNICK LLP

By: /s/ Daniel A. Rozansky

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