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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

16 Brayden STARK, Judd
17 OOSTYEN, Kevin BLACK, and
18 Maryann OWENS, individually
19 and on behalf of all others
20 similarly situated,

21 Plaintiffs,

22 v.

23 PATREON, INC.,

24 Defendant.

No. 3:22-cv-03131-JCS

**UNITED STATES OF AMERICA'S
ACKNOWLEDGEMENT OF
CONSTITUTIONAL
CHALLENGE, STIPULATED
REQUEST TO ENLARGE TIME
TO INTERVENE, AND
~~[PROPOSED]~~ ORDER**

25 Pursuant to Civil L.R. 6-2, subject to the Court's approval, the United
26 States, Plaintiffs, and Defendant, through their undersigned counsel of record,
27 HEREBY STIPULATE as follows:
28

1 1. On August 6, 2022, Defendant filed a Notice of Constitutional
2 Question pursuant to Federal Rule of Civil Procedure 5.1 and Civil L.R. 3-8. *See*
3 ECF No. 24.

4 2. In that Notice, Defendant states that its Motion to Dismiss, *see* ECF
5 No. 21, “draws into question the constitutionality of the Video Privacy Protection
6 Act (“VPPA”), 18 U.S.C. § 2710,” specifically “whether the VPPA, on its face and as
7 Plaintiffs seek to apply it, is unconstitutional because it violates the First
8 Amendment to the United States Constitution.” ECF No. 24.

9 3. The United States is authorized to intervene in any federal court
10 action in which the constitutionality of an Act of Congress is drawn into question.
11 28 U.S.C. § 2403(a).

12 4. Pursuant to Federal Rule of Civil Procedure 5.1, the current deadline
13 for the United States to intervene is October 5, 2022.

14 5. The United States has not yet decided whether to intervene in this
15 action to defend the constitutionality of the VPPA.

16 6. The approval of the Solicitor General is required for the United
17 States to intervene in an action to defend the constitutionality of a federal statute,
18 *see* 28 C.F.R. § 0.21, and that approval process often takes several weeks.

19 7. The United States requires additional time to decide whether to
20 intervene due to the press of business for counsel for the United States, and
21 because the process of determining whether to intervene takes several weeks.

22 8. For these reasons, the United States, Plaintiffs, and Defendant
23 stipulate to provide the United States with 30 additional days—until November 4,
24 2022—to decide whether to intervene for the limited purpose of defending the
25 constitutionality of the VPPA.
26
27
28

1 9. If the United States decides to intervene, it will be prepared to file
2 its notice of intervention and accompanying memorandum in defense of the
3 constitutionality of the statute by no later than November 4, 2022.

4 10. This is the first modification of the time for the United States to
5 decide whether to intervene in this matter. Plaintiffs and Defendant have
6 otherwise stipulated to the following modifications of time:

- 7 i. Extending Defendant's time to respond to the complaint from
8 June 21, 2022 to August 5, 2022, *see* ECF No. 13; and
9 ii. Extending the briefing schedule for Defendant's motion to dismiss
10 as follows, *see* ECF No. 26:
11 1. Continuing the deadline for Plaintiffs' response until
12 September 9, 2022;
13 2. Continuing the deadline for Defendant's reply until
14 September 30, 2022; and
15 3. Continuing the hearing until October 14, 2022.

16 11. This stipulated extension will not otherwise affect the deadlines in
17 this matter.

18 12. This stipulated extension is requested for good cause, and is not
19 intended to cause undue delay or otherwise prejudice any party.
20

21 **IT IS SO STIPULATED.**
22

23 Dated: September 16, 2022

24 Respectfully submitted,
25

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ATTESTATION

I hereby attest, pursuant to Civil L.R. 5-1(h)(3), that each of the other signatories to this stipulation have concurred in the filing of the document.

/s/ Leslie Cooper Vigen
LESLIE COOPER VIGEN

~~[PROPOSED]~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 9/16/2022


Hon. Joseph C. Spero
United States Chief Magistrate Judge