IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

POST UNIVERSITY, INC., Plaintiff, v. LEARNEO, INC., Defendant.	Case No. 3:21-cv-01242-VDO May 6, 2026

LEARNEO, INC.'S MOTION FOR REMITTITUR OR, IN THE ALTERNATIVE, A NEW TRIAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 59 (A) AND (E)

ORAL ARGUMENT REQUESTED

For the reasons set forth more specifically in Defendant Learneo, Inc.'s ("Learneo") Memorandum of Law being filed contemporaneously with this motion, Learneo respectfully moves for remittitur, or, in the alternative a new trial, pursuant to Federal Rule of Civil Procedure 59(a) and/or 59(e) on Plaintiff Post University, Inc.'s ("Post") claims brought under 17 U.S.C. § 1202 (the Digital Millennium Copyright Act ("DMCA") and for other and further relief as the Court deems just and proper. Learneo's grounds for remittitur or new trial are set forth below:

- The jury's damages award was excessive because Learneo's conduct was minimally culpable, the award was disproportionate to any harm suffered by Post, and no comparable award has ever been sustained under 17 U.S.C. § 1202.
- Constitutional Due Process requires reducing the damages award to no more than $250 per 17 U.S.C. § 1202 violation because the magnitude of the aggregated award is wholly disproportionate to the offense and obviously unreasonable.

This motion is made pursuant to Federal Rule of Civil Procedure 59 and is based on the evidence submitted at trial, all records and proceedings herein, all supporting documents filed with this motion, and the arguments of counsel.

Dated: May 6, 2026

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By: */s/ Joseph C. Gratz*

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POST UNIVERSITY, INC., Plaintiff, v. LEARNEO, INC., Defendant.	Case No. 3:21-cv-01242-VDO May 6, 2026

LEARNEO, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR REMITTITUR OR, IN THE ALTERNATIVE, A NEW TRIAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 59 (A) AND (E)

TABLE OF CONTENTS

Page

INTRODUCTION 1

STANDARD 2

BACKGROUND 2

A. The Course Hero Platform 2

B. Post's Claims 4

C. Post's Damages Evidence at Trial 5

D. The Jury's Verdict 5

ARGUMENT 6

I. THE EXCESSIVE DAMAGES AWARD SHOULD BE REMITTED UNDER FEDERAL COMMON LAW 6

A. Learneo's Conduct Was, at Most, Minimally Culpable 7

B. The Award Is Wildly Disproportionate to Any Harms Post Proved 8

C. No Comparable Known Damages Award Has Been Sustained 10

D. The Aggregated Nature of the Award Further Compels Remittitur 11

II. ALTERNATIVELY, CONSTITUTIONAL DUE PROCESS INDEPENDENTLY REQUIRES REDUCING THE AWARD 12

CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Cases

BMW of N. Am., Inc. v. Gore,
517 U.S. 559 (1996) 6

Fischer v. Forrest,
968 F.3d 216 (2d Cir. 2020) 9

Gessele v. Jack in the Box Inc.,
No. 23-2522, 2026 WL 1075915 (9th Cir. Apr. 20, 2026) 11, 13, 14

Gilead Cmty. Servs., Inc. v. Town of Cromwell,
112 F.4th 93 (2d Cir. 2024) 10

Golan v. FreeEats.com, Inc.,
930 F.3d 950 (2019) 13, 15

Parker v. Time Warner,
331 F.3d 13 (2d Cir. 2003) 11, 12

Payne v. Jones,
711 F.3d 85 (2d Cir. 2012) 2, 6, 12, 13

Roberts v. BroadwayHD LLC,
518 F. Supp. 3d 719 (S.D.N.Y. 2021) 9, 13,

Six (6) Mexican Workers v. Az. Citrus Growers,
904 F.2d 1301 (9th Cir. 1990) 13

St. Louis, I.M. & S. Ry. Co. v. Williams,
251 U.S. 63 (1919) 12

State Farm Mut. Auto. Ins. Co. v. Campbell,
538 U.S. 408 (2003) 9, 10

Turley v. ISG Lackawanna, Inc.,
774 F.3d 140 (2d Cir. 2014) 1, 6, 10

Wakefield v. ViSalus, Inc.,
51 F.4th 1109 (9th Cir. 2022) 13

Statutes

17 U.S.C. § 1202 ..... passim

17 U.S.C. § 512 ..... 4, 7

Rules

Fed. R. Civ. P. 59 2

TABLE OF EXHIBITS[1]

Exhibit No.	Trial Exhibit	Description
01		Trial Transcript Vol. V, February 24, 2026
02	PTX982	Amended Complaint Exhibit 2
03	PTX986	Amended Complaint Exhibit 6
04	PTX993	Amended Complaint Exhibit 13
05	PTX658	Jan. 6, 2021 letter: T. Johnson to dmca@coursehero.com
06		Trial Transcript Vol. VI, February 25, 2026
07	DTX10020	Zendesk Ticket #1874611 Take Down of Post University Copyrighted Materials
08	PTX659	Feb. 24, 2021 letter: T. Johnson to dmca@coursehero.com
09	DTX10021	Zendesk Ticket #1971624 Take Down of Post University Copyrighted Materials
10	DTX10467	Document entitled "Audit Audio Lecture Notes Chapter 17" (downloaded from CourseHero.com)
11		Trial Transcript Vol. VII, February 26, 2026
12	DTX10001	Course Hero Terms of Use (last updated Feb. 16, 2022)
13		Trial Transcript Vol. III, February 19, 2026
14		Trial Transcript Vol. VIII, February 27, 2026
15		Trial Transcript Vol. IV, February 20, 2026
16	PTX1018	Amended Complaint Exhibit 38
17		Trial Transcript Vol. II, February 18, 2026
18	DTX10030	Course Hero flyer, How to protect your content and identify academic integrity violations on Course Hero, attachment to CH0480953
19	PTX501	Copyright Registration
20	DTX11352	WIS 585
21	PTX115	ENG 110 - College Writing - Post U Course Syllabus (Original J. Bauer Deposition Transcript Ex. 22)
22	PTX606	ACC111 Copyright Registration
23	DTX11967	WIS 1192
24	PTX117	ACC 111 - Financial Accounting Post U Course Syllabus (Original J. Bauer Deposition Transcript Ex. 24)

[1] All exhibits cited herein are being filed with Learneo, Inc.'s Memorandum in Support of its Renewed Motion for Judgment as a Matter of Law, Under Fed. R. Civ. P. 50(b), or a New Trial Under Rule 59(a) (ECF No. 389).

Exhibit No.	Trial Exhibit	Description
25	DTX10900	WIS 159
26	PTX1239	WIS 159
27	DTX12977	WIS 600
28	PTX1734	WIS 600
29	PTX4144	Summary Chart for WIS
30	DTX11012	WIS 262
31		Trial Transcript Vol. I, February 17, 2026
32	DTX11142	WIS 383
33	DTX10053	Course Hero website, "Upload your document to start studying" page, https://www.coursehero.com/educators/
34	DTX10785	WIS 51
35	PTX1071	WIS 9
36	DDX13.3	WIS 330
37	DTX12847	WIS 2072
38	DTX11084	WIS 330
39	DTX12862	WIS 2087
40	DTX10814	WIS 79
41	DTX10942	WIS 201
42	DTX11533	WIS 765
43	DTX12126	WIS 1350
44		Trial Transcript Vol. IX, March 2, 2026
45	DTX10940	WIS 199
46	PTX3342	WIS 2138
47	PTX2123	WIS 975
48	PTX2315	WIS 1159
49	DTX10885	WIS 146
50	DTX11630	WIS 860
51	DTX11158	WIS 398

Defendant Learneo, Inc. ("Learneo") respectfully moves for remittitur of the DMCA damages award or, in the alternative, a new trial under Federal Rule of Civil Procedure 59.

INTRODUCTION

If the jury's liability verdict for DMCA violations stands, the damages should be reduced or a new trial ordered. The jury awarded the statutory maximum of $25,000 per violation of 17 U.S.C. § 1202, for a massive total exceeding $75 million. But that award has no reasonable relation to any facts here: not to the at most technical violations that Post alleged based on automated platform processing applied to all documents regardless of any copyright management information ("CMI"); not to the miniscule harm Post ever tried to prove, which was zero for the DMCA violations themselves and $22.97 per document for the copyright violations; and not to any social benefit or deterrence effect for parties that, like Learneo, already have a track record of strong DMCA compliance and robust measures to help copyright owners police user infringement on online platforms.

The Second Circuit has not minced words about the importance of ensuring jury awards like this stay within reasonable bounds. The Second Circuit requires courts in these circumstances to exercise "relatively stringent control over the size" of awards and warns that "the degree of discretion enjoyed by trial courts" to sustain large awards is "relatively narrow." *Turley v. ISG Lackawanna, Inc.*, 774 F.3d 140, 164 (2d Cir. 2014) (citation omitted). This case includes all the hallmarks of an excessive award requiring reduction. The most obvious is the whopping 1,000:1 ratio—and likely higher—between the $25,000 per violation that the jury awarded and the at most $22.97 per document value that Post's own expert put on Post's works. The Supreme Court has cautioned that ratios exceeding single digits should rarely survive review, and the Second Circuit often requires even lower ratios. Yet the jury here awarded Post a *quadruple* digit ratio. Federal

common law, and at the least constitutional due process, require significantly reducing that award. The Court should thus order the award remitted to no more than $250 per violation, for a roughly 10:1 ratio between the award and any possible harm Post sustained, or grant a new trial if Post refuses to accept the reduction.

STANDARD

District courts may grant a new trial for "any reason for which a new trial has heretofore been granted." Fed. R. Civ. P. 59(a), (e). That power includes the power to order remittitur of an excessive verdict or, alternatively, a new trial if the reduced award is rejected. *Payne v. Jones*, 711 F.3d 85, 93-96 (2d Cir. 2012). When a jury awards damages going beyond what the plaintiff showed is needed to compensate for any harm, remittitur is warranted if those damages are excessive. *Turley*, 774 F.3d at 164. Under Second Circuit law, "'a degree of excessiveness less extreme than grossly excessive will support" granting "a new trial or remittitur of damages." *Id.*

BACKGROUND

A. The Course Hero Platform

Course Hero is an online educational platform designed to help every student engage deeper with their coursework and to help educators design courses and share teaching strategies. Ex. 15, Tr. vol. IV, at 185:8–16, 220:14–22. Course Hero users—either students or educators—use Course Hero's platform to upload study resources for others to access. Ex. 15, Tr. vol. IV, at 220:14–22. To use Course Hero's platform, a user must agree to Course Hero's Terms of Use, Copyright Policy, and Honor Code. Ex. 1, Tr. vol. V, at 109:24–110:7. By agreeing to those policies, users represent, warrant, and agree that they will use Course Hero's platform only on documents that they have the necessary rights to upload, and will not use the platform in any manner that would violate school academic integrity policies or infringe the intellectual property rights of others. Ex. 1, Tr. vol. V, at 110:4–23. Users also expressly grant Learneo a license to

modify, store, edit, display, reproduce, and distribute their uploaded documents on Course Hero. Ex. 12, DTX10001, at 4; Ex. 1, Tr. vol. V, at 32:19–33:6.

Learneo has a DMCA notice-and-takedown process maintained by a dedicated compliance team. Ex. 15, Tr. vol. IV, at 196:10–25. Course Hero's Terms of Use direct copyright holders to report potentially infringing content using its online DMCA form. Ex. 12, DTX10001, at 5. Consistent with the Copyright Act, Learneo takes down all content reported by a § 512(c)-compliant notice and terminates the accounts of repeat infringers. Ex. 1, Tr. vol. V, at 217:24–218:22, 226:13–25, 229:4–11.

Users can search for documents on the Course Hero platform by school, course, and type of document. Ex. 15, Tr. vol. IV, at 185:17–186:3. Users can also search the full text of documents for key words and phrases using Course Hero's search tool or external search engines like Google. Ex. 1, Tr. vol. V, at 134:8–15.

When users upload documents to the Course Hero platform, the platform initially "locks" each document. Ex. 1, Tr. vol. V at 144:11–25. A user must "unlock" a document to view the full document or download it. Ex. 1, Tr. vol. V, at 144:11–25. Before a document is unlocked, the user sees a preview of the document so they can confirm what they are unlocking. Ex. 1, Tr. vol. V, at 136:23–137:6. A preview shows an excerpt of the document roughly half-a-page long with other portions blurred and other pages left off. *E.g.*, Ex. 2, PTX982. Users may obtain document unlocks by uploading their own study resources, paying a subscription fee, or buying unlocks à la carte. Ex. 1, Tr. vol. V, at 110:24–111:6. Educators get free unlocks regularly. Ex. 15, Tr. vol. IV, at 222:25–224:14. When users use the Course Hero platform to upload documents, the platform operates the same regardless of the document and treats all parts of the document the same, except for answers and images; the platform does not operate differently on parts of a

document that could be CMI under 17 U.S.C. § 1202(c). Ex. 1, Tr. vol. V, at 136:23–137:21.

Learneo also provides other tools for policing intellectual property on the Course Hero website. The Course Hero platform runs an automatic copyright check that rejects documents upon upload with certain copyright-related terms, symbols, and phrases. Ex. 1, Tr. vol. V, at 123:1–126:24. Learneo will also offer free unlocks where they may help a rightsholder confirm whether a document is infringing and instructs rightsholders to include a specific phrase on any documents that they wish to be blocked from the site. Ex. 6, Tr. vol. VI, at 28:13–22; 215:19–217:17; Ex. 18, DTX10030. The Course Hero platform also provides special educator accounts. Ex. 15, Tr. vol. IV, at 224:5–14. These accounts include a "Claim a Course" feature that allows educators to list themselves as instructor of record for a course and receive automatic notifications of uploaded documents associated with their courses so they can assess whether that content should be on Course Hero. Ex. 15, Tr. vol. IV, at 219:24–220:9.

B. Post's Claims

In January and February 2021, Post sent two letters seeking the removal of documents on Course Hero under 17 U.S.C. § 512(c) of the DMCA. Ex. 5, PTX658; Ex. 8, PTX659. Each time, Learneo took down all documents listed in the letter and provided written confirmations of the takedowns within a week of receiving Post's request. Ex. 7, DTX10020 at 1; Ex. 9, DTX10021, at 1. None of the documents that either letter identified were the subject of Post's claims at trial.

Unsatisfied with the notice-and-takedown procedure Congress established, Post filed suit alleging copyright infringement and violations of §§ 1202(a) and (b). While Post only brought copyright infringement claims for five works-in-suit, Post brought § 1202 claims for 2,197 works.

Under § 1202(a), Post claimed that Learneo provided or distributed false CMI in the works-in-suit by: (1) employing its own logos on the document display pages of the Course Hero website, and its own copyright notice in the bottom corner, uniformly across the site (*i.e.*, not only on pages

displaying Post documents); (2) adding watermarks on downloaded versions of certain works-in-suit stating that the document was "downloaded from" or "shared via" Course Hero; (3) adding metadata to downloaded versions of certain works-in-suit stating the userIDs of the uploader and downloader and the text string "CHDL-UGC-Meta," which stands for "Course Hero Download – User Generated Content – Meta"; and (4) displaying banners on the Course Hero website, *e.g.*, "Upload your study docs or become a Course Hero member to access this document / Continue to access," "Need the answer? / [#] tutors online. Answers in as fast as 15 minutes. / Get it – with an explanation."

For § 1202(b), Post claimed that Learneo removed or altered existing CMI in the works-in-suit by showing document previews in blurred form, by not displaying document metadata on the website, and by distributing downloaded versions of certain documents without their original metadata.

C. Post's Damages Evidence at Trial

Post did not present the jury with any evidence of direct harm from Learneo's alleged DMCA violations. Ex. 14, Tr. vol. VIII, at 43:4–6. And on Post's copyright claims, Post provided no calculation or evidence related to its own lost profits. Ex. 14, Tr. vol. VIII, at 39–43. Instead, it chose to provide expert testimony only on Learneo's average revenue per Post University document on Course Hero's website. Ex. 14, Tr. vol. VIII, at 39–43. Post's expert Mr. Myers calculated that Learneo's revenue per Post University document was $22.97. Ex. 14, Tr. vol. VIII, at 42:23–43:3.

D. The Jury's Verdict

The jury found that Learneo violated § 1202(a) a total of 1,458 times while awarding the maximum $25,000 per violation, resulting in a § 1202(a) damages award of $36,450,000. ECF No. 368 at 2–3. The jury also found that Learneo violated § 1202(b) a total of 1,557 times while

awarding the maximum $25,000 per violation, resulting in a § 1202(b) damages award of $38,925,000. *Id.* at 4–5. The jury thus found $75,375,000 in total for § 1202 violations. *Id.* at 4–5. Assuming that each of the 2,197 works in suit accounted for at least one of the § 1202 violations, the jury's verdict results in awarding Post $34,308 per work in suit. In reality, the per-work award is higher because Post's own expert Mr. Myers admitted that his analysis revealed that several works-in-suit had zero § 1202 violations in the relevant time period, although he had "not attempted to calculate" how many had zero violations. Ex. 15, Tr. vol. IV, at 143:23–148:6.[2]

In contrast, the jury awarded Post $114.85 for Post's copyright infringement claims for its five registered works, which was the amount Post contended Learneo earned in profits based on the evidence of $22.97 in per-document revenue. ECF No. 368, at 8; ECF No. 355, at 35.

ARGUMENT

I. THE EXCESSIVE DAMAGES AWARD SHOULD BE REMITTED UNDER FEDERAL COMMON LAW

The Second Circuit requires district courts to act with "increased judicial readiness to curtail any excessiveness" in a jury's damages award on federal claims. *Payne*, 711 F.3d at 96–97. When, as here, a jury's award goes beyond compensating a plaintiff for any proven harms, the Second Circuit imposes "relatively stringent control over the size" of the award to ensure the award is "fair, reasonable, predictable, and proportionate," and "to avoid extensive and burdensome social costs." *Turley*, 774 F.3d at 164 (citation omitted).

The Second Circuit requires courts reviewing awards for excessiveness under federal common law to apply three "guideposts." *Payne*, 711 F.3d at 101 (adopting and applying requirements from related context of *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574–75 (1996)).

[2] If the jurors' 1202(a) violations are for the same works as the jurors 1202(b) violations, then the total number of works implicated would be 1,557. Therefore, the total damages per work would be roughly $48,410 ($75,375,000 / 1,557 works).

The guideposts are: (1) "the degree of reprehensibility" of the defendant's conduct; (2) "the disparity between the harm" suffered by the plaintiff and the damages awarded; and (3) penalties "imposed in comparable cases." *Gore*, 517 U.S. at 574–75; *Payne*, 711 F.3d at 101. The degree-of-reprehensibility factor is generally "the most important." *Id.*.

Applying these standards, the aggregated award here is excessive and should be remitted.

A. Learneo's Conduct Was, at Most, Minimally Culpable

The most important factor—culpability—alone shows the jury's verdict here was excessive and requires remittitur. Even if the jury's liability verdict stands, the evidence shows Learneo was at most minimally culpable. For one, there is no dispute that Learneo complies with the DMCA's notice-and-takedown requirements, illustrating Learneo's good-faith efforts to help copyright owners protect their rights against users who might try to use Course Hero's platform in infringing ways. Ex. 1, Tr. vol. V, at 217:24–218:22; Ex. 6, Tr. vol. VI, at 212:18–213:12. Consistent with the DMCA, Learneo takes down all content reported by a § 512(c)-compliant notice and terminates the accounts of repeat infringers. Ex. 1, Tr. vol. V, at 217:24–218:22, 226:13–25, 229:4–11. Beyond complying with the DMCA's statutory takedown procedures, Learneo provides other tools for policing intellectual property, including: an automatic copyright check that rejects flagged documents upon upload; free unlocks for rightsholders to verify potentially infringing activity by users; and the "Claim a Course" feature for educators to receive notifications about content uploaded to their courses. Ex. 1, Tr. vol. V, at 235:12–22, 239:20–241:22.

The facts here exemplify the effectiveness of Learneo's DMCA-compliant process. Learneo responded to each of Post's takedown letters by taking down all identified documents and providing written confirmations within a week. Ex. 7, DTX10020, at 1–2; Ex. 9, DTX10021, at 1–2. None of those documents is the subject of Post's claims at trial. These facts confirm Learneo's low degree of reprehensibility—Learneo was responsive to Post's complaints,

maintained proactive copyright-protection measures, and operated a legitimate educational platform based on user-generated content.

Learneo's low degree of culpability is also evident because Post proved at most minor, technical violations of § 1202. For instance, the § 1202(a) violations are based not on any deliberate falsification of authorship, but on (1) a generic copyright notice on the Course Hero website that is not applied to any specific Post document; (2) watermarks on downloaded documents noting the documents were "downloaded from" or "shared via" Course Hero; (3) metadata including uploader and downloader userIDs; and (4) generic website banners promoting Course Hero's services. Nor is there any evidence that when users upload and share documents using the Course Hero platform, the platform treats the alleged CMI parts of a document differently from the rest of the document. Instead, the platform treats all documents and all document parts uniformly. Ex. 1, Tr. vol. V, at 69:20–70:18, 136:23–137:21. Such uniform website features are far removed from the type of deliberate, deceptive conduct that might warrant a finding of high reprehensibility.

The same goes for the alleged § 1202(b) violations. Those violations are based on showing document previews, not displaying document metadata on the website, and distributing downloaded versions of certain documents without their original metadata. Once again, these are all functions of the platform's automated operation, not targeted acts of willful infringement.

B. The Award Is Wildly Disproportionate to Any Harms Post Proved

The wildly disproportionate nature of the award here compared to any actual harm Post suffered also requires remittitur, alone or combined with the other factors. Although there are no bright-line rules for what disparities are excessive and warrant remittitur, the Supreme Court has cautioned that, "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages" will survive scrutiny. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538

U.S. 408, 424–25 (2003). Here, the ratio between those two is in the *quadruple* digits, a staggering disparity that requires remittitur. *Id.*

On the compensatory side of the scale, Post provided no evidence that it lost profits, suffered harm to its reputation, or was otherwise harmed by Learneo's alleged § 1202 violations. Ex. 14, Tr. vol. VIII, at 42:23–43:10. The only relevant evidence Post offered was expert testimony that Learneo earned $22.97 in revenue per document listed under the Post University heading on Course Hero's platform. Ex. 14, Tr. vol. VIII, at 38:24–39:10. That same amount sets the upper limit on any possible harm Post suffered and the jury compensated for the § 1202 violations found here. After all, "[t]he point of CMI is to inform the public that something is copyrighted," which facilitates licensing and discourages piracy. *Roberts v. BroadwayHD LLC*, 518 F. Supp. 3d 719, 737 (S.D.N.Y. 2021); *see also Fischer v. Forrest*, 968 F.3d 216, 222–23 (2d Cir. 2020) (explaining that CMI protects copyright owners' ability to license copyrighted works). That is, CMI helps copyright holders protect the value of the underlying copyrighted work. *Id.* And here, the only possible value Post proved is the $22.97 per document Post said Learneo earned on Post's copyrighted works.

Despite that upper limit on any required compensation Post proved for the alleged § 1202 violations, the jury awarded Post the maximum $25,000 in statutory damages for each violation it found of § 1202(a) and § 1202(b). ECF No. 368, at 3. The award for each individual violation thus amounts to a more than 1,000:1 punitive award relative to any compensatory damages. In fact, the per-document ratio is even higher because the jury necessarily awarded Post statutory damages under both § 1202(a) and § 1202(b) for many of the same documents, given that there were only 2,197 works-in-suit but the jury found a total of 3,015 violations across § 1202(a) and § 1202(b) combined. Even if the jury found at least one § 1202 violation per document, the

statutory damages per document reached $34,308, a roughly 1,500:1 ratio. Yet the actual ratio is even higher, given Mr. Myers's admission that several works-in-suit had zero § 1202 violations. Ex. 15, Tr. vol. IV, at 143:23–148:6.

Regardless of the exact number, a quadruple-digits ratio is grossly excessive. *State Farm*, 538 U.S. at 424–25. Since *State Farm*, the Second Circuit has consistently held that district courts abuse their discretion in allowing far lower ratios. *Gilead Cmty. Servs., Inc. v. Town of Cromwell*, 112 F.4th 93 (2d Cir. 2024) (remitting 27.6:1 ratio to 11:1); *Turley*, 774 F.3d at 165–67 (remitting 4:1 ratio to 2:1). In *Gilead*, for example, the Second Circuit concluded that there was "ample evidence of highly reprehensible conduct" by the defendant, including "a deliberate and sustained campaign of discrimination and retaliation." *Gilead*, 112 F.4th at 105. Yet although the defendant's high culpability weighed in favor of a substantial non-compensatory award, the ratio of "27.6 to 1" between punitive and compensatory damages gave the Second Circuit "pause." *Id.* Because that ratio was "far beyond the range" permitted, the Court ordered it reduced. *Id.* The 1,500+:1 ratio here is even further beyond any permissible range.

C. No Comparable Known Damages Award Has Been Sustained

The magnitude of the jury's award here is without parallel. A total award of $75,375,000 for the types of technical § 1202 violations at issue—automated platform features applied uniformly to user-generated content—far exceeds any known damages award in a § 1202 case. Take, for instance, *GC2 Inc. v. Int'l Game Tech., IGT, Doubledown Interactive LLC*., 391 F. Supp. 3d 828, 838 (N.D. Ill. 2019). There, GC2 was awarded $16,275,053.01 in copyright infringement damages, but only $1.74 million in § 1202 damages—$2,500 per violation for 696 violations.[3] *Id.*

[3] Notably, in *GC2*, the jury found defendants liable for violating *each* of § 1202's four prohibitions 696 times (2,784 total violations), but the Court rejected the jury's violation count, citing concerns with "potential overlap" and determined that defendants would only be held liable for a total of 696 violations. *GC2*, 391 F. Supp. 3d at 840.

And the few instances where the statutory maximum—$25,000 per violation—has been awarded, involved default judgments and notably smaller amounts. *See Sheldon v. Plot Commerce*, No. 15 CV 5885 (CBA)(CLP), 2016 WL 5107072, at *17 (E.D.N.Y. Aug. 26, 2016), *report and recommendation adopted*, No. 15 CV 5885(CBA)(CLP), 2016 WL 5107058 (E.D.N.Y. Sept. 19, 2016) (awarding $500,000.00 for 20 violations); *Bus. Casual Holdings, LLC v. TV-Novosti*, No. 21-CV-2007 (JGK) (RWL), 2023 WL 1809707, at *11 (S.D.N.Y. Feb. 8, 2023), *report and recommendation adopted*, No. 21-CV-2007 (JGK), 2023 WL 4267590 (S.D.N.Y. June 28, 2023) (awarding $75,000 for 3 violations).

None of these awards came anywhere close to the $75 million windfall Post received here, yet more confirmation of the award's excessiveness.

D. The Aggregated Nature of the Award Further Compels Remittitur

Ensuring the award here stays within settled constraints on excessive damages is especially important, given the punitive nature of the aggregated award. The Second Circuit recognizes that the aggregation of statutory damages can pose special challenges by "expand[ing] the potential statutory damages so far beyond the actual damages suffered that the statutory damages come to resemble punitive damages." *Parker v. Time Warner*, 331 F.3d 13, 22 (2d Cir. 2003) (discussing aggregation in class action context).

That is exactly what happened here. The jury awarded aggregated statutory damages totaling more than $75 million for works Post showed had a total value of at most roughly $50,000 (2,197 works times $22.97 per work). Thus, 99.93% of the $75 million award goes beyond compensating Post for any possible harm, making plain the jury treated the award as a form of punitive damages. *See Gessele v. Jack in the Box Inc.*, No. 23-2522, 2026 WL 1075915, at *11–12 (9th Cir. Apr. 20, 2026) (recognizing statutory damage awards may become effectively punitive). Remittitur is critical in these instances to prevent the "*in terrorem* effect on defendants"

that excessive punitive damage awards would otherwise cause. *Parker*, 331 F.3d at 22 (noting *in terrorem* effect may "induce unfair settlements" absent court oversight).

The rule of constitutional avoidance reinforces the need to remit the excessive award. As explained in Section II, *infra*, even aside from federal common law remittitur, the Due Process Clause of the Constitution would impose similar constraints on the damages here and require the same reduction in the award. *Payne*, 711 F.3d at 96–97 (explaining Due Process Clause backstops excessive damages awards). But to avoid unnecessarily deciding that constitutional question, the Court should apply common-law remittitur on the facts here and order a reduction in the $75 million award or, in the alternative, a new trial. *See Sony BMG Music Entm't v. Tenenbaum*, 660 F.3d 487, 508–09 (1st Cir. 2011) (holding constitutional-avoidance doctrine required district court to apply common-law remittitur where available rather than resolving due process issues).

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The grossly excessive award here should be remitted. Unless Post elects a new trial, the award should be reduced to no more than $250 per § 1202 violation for a roughly 10:1 ratio between punitive and actual damages. At the least, for all the same reasons, the award should be remitted to the statutory minimum of $2,500 per § 1202 violation.

II. ALTERNATIVELY, CONSTITUTIONAL DUE PROCESS INDEPENDENTLY REQUIRES REDUCING THE AWARD

Independent of common-law excessiveness standards, constitutional due process requires reducing the jury award to no more than $250 per § 1202 violation under the standards in *St. Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63 (1919). Under those standards, the Due Process Clause prohibits statutory damages that are "so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable." *Id.* at 67. The rule carries special force when aggregating statutory damages "result[s] in extraordinarily large awards." *Wakefield v. ViSalus*,

Inc., 51 F.4th 1109, 1122 (9th Cir. 2022).

Much like the analysis under *Payne* and *Gore* for excessive awards, *Williams* requires a comparison between jury award and a defendant's "offense": is the magnitude of an aggregated statutory award wholly disproportionate to the nature and egregiousness of the offense? 251 U.S. at 67. In answering that question, courts look to many of the same factors relevant under common-law remittitur. The Eighth Circuit thus affirmed a reduction of an aggregated statutory award, given the defendants' low degree of culpability and the significant disparity between the harm suffered and the total amount of the aggregated award. *Golan v. FreeEats.com, Inc.*, 930 F.3d 950, 962-63 (2019). Similarly, the Ninth Circuit reversed a district court's refusal to reduce an aggregated statutory damages award, ordering the district court on remand to consider: the extent of the defendant's culpability; the substantive or technical nature of the violations; the nature and persistence of the violations; the total award and its disparity to the harms suffered; damages awards in comparable cases; and any other relevant circumstances. *Wakefield*, 51 F.4th at 1122 (citing *Six (6) Mexican Workers v. Az. Citrus Growers*, 904 F.2d 1301, 1309 (9th Cir. 1990)).

Courts treat the disparity between harm suffered and the total award as particularly important. *Gessele*, 160 F.4th at 1030–31. While single-digit ratios may not raise constitutional concerns, larger ratios do. *Compare Wakefield*, 51 F.4th at 1123–24 (noting "double or triple damages" are likely permissible), *with Gessele*, 160 F.4th at 1031 (ratio of 400 between statutory and actual damages "should have raised eyebrows").

For much the same reasons discussed in Section I, *supra*, these factors, alone and together, require reducing the jury's aggregate award to comply with constitutional due process:

- **Learneo's minimal culpability for at most technical violations.** The point of CMI and § 1202 is to facilitate copyright licensing and discourage privacy. *E.g.*, *Roberts*,

518 F. Supp. 3d at 737. Learneo's conduct shows it consistently acted in good faith to further those purposes. Its platform includes significant safeguards against copyright-infringing uses, including: a dedicated compliance team; a DMCA-compliant takedown process; termination of repeat infringers; automated copyright checks; free unlocks for rightsholders; and the "Claim a Course" notification feature. Ex. 1, Tr. vol. V, at 217:24–218:22, 235:12–22, 239:20–241:22; Ex. 6, Tr. vol. VI, at 212:18–213:12. And the § 1202 violations the jury found are substantively technical, arising from the automated functioning of a platform that Course Hero's users use to process millions of documents.

- **Disparity between the total award and actual harm.** As explained, Post's only evidence of per-document damages was $22.97 in Learneo revenue per document. *Supra* Section I.B. The jury's aggregate award of $75,375,000 represents a ratio exceeding 1,000:1 relative to any evidence of actual harm. Yet even a ratio of 400:1 "should have raised eyebrows." *Gessele*, 160 F.4th at 1031.

- **Comparable cases.** No comparable case has sustained a damages award remotely close to $75,375,000 for § 1202 violations. *See, e.g.*, *GC2*, 391 F. Supp. 3d at 838 ($1.74 million); *Sheldon*, 2016 WL 5107072, at *17 ($500,000); *Bus. Casual Holdings*, 2023 WL 1809707, at *11 ($75,000).

- **Circumstances of the case.** The method by which Post's expert Mr. Myers counted alleged DMCA infractions inflated the violation count and the damages request, which amplifies the due process concerns. Mr. Myers counted thousands of alleged violations for documents uploaded only once, and the vast majority of the alleged infractions he counted (240,157 of 299,322) were associated with the preview stage—*i.e.*, users

merely viewing a webpage. Ex. 15, Tr. vol. IV at 74:10–18, 115:14–127:20. Mr. Myers' analysis transformed 2,197 documents, worth roughly $50,000 in total using Post's $22.97 revenue-per-document calculation, into nearly 300,000 alleged violations and a minimum statutory award of $748 million. That analysis anchored the jury to an award untethered from any measure of actual harm and falsely implied that a $75 million award—1,000+ times greater than actual harm alleged—was reasonable.

As these factors show, there is nothing proportionate about the jury's $75 million award and any DMCA violations Post proved. Far from showing that Learneo acted maliciously or even reprehensibly, the trial revealed Learneo's consistent, good-faith efforts to comply with the DMCA and help copyright holders protect their works.

Golan affirmed a statutory damages reduction on similar facts. 930 F.3d at 962–63. There, the jury awarded the minimum statutory damages, $500, for each violation of the Telephone Consumer Protection Act. *Id.* Yet the defendant "plausibly believed it was not violating the TCPA" and there was no evidence of "severe" harm. *Id.* Given those facts, the Due Process Clause required reducing the award to $10 per violation, a 50x reduction below the statutory minimum. *Id.*

The similar facts here about Learneo's at most minimal culpability and the lack of harm to Post similarly require reducing the jury's award—from the statutory maximum $25,000 per violation that the jury awarded to no more than $250 per violation, a more modest reduction than in *Golan* of 10x below the statutory minimum.

CONCLUSION

For all these reasons, if the DMCA liability verdict stands, the damages should be reduced or, in the alternative, a new trial granted.

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