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16 [CAPTION CONTINUED ON NEXT PAGE]

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21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 SAN FRANCISCO DIVISION

24 IN RE OPENAI CHATGPT LITIGATION

Master File No. 3:23-cv-03223-AMO

25 This document relates to:
26 All Actions

**DEFENDANTS' ANSWER TO FIRST
CONSOLIDATED AMENDED
COMPLAINT**

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1 Defendants OpenAI, Inc., OpenAI, L.P., OpenAI OpCo, L.L.C., OpenAI GP, L.L.C.,
2 OpenAI Startup Fund GP I, L.L.C., OpenAI Startup Fund I, L.P., and OpenAI Startup Fund
3 Management, L.L.C. (collectively, “OpenAI”), by and through the undersigned counsel, submit
4 the following answer to Plaintiffs’ First Consolidated Amended Complaint.¹

5 OpenAI states that the headings and sub-headings throughout the First Consolidated
6 Amended Complaint do not constitute well-pleaded allegations of fact and, therefore, require no
7 response. To the extent a response is deemed required, OpenAI denies the allegations contained
8 in the First Consolidated Amended Complaint’s headings and sub-headings.

9 OpenAI denies all allegations in the First Consolidated Amended Complaint that are not
10 explicitly admitted and otherwise answers as follows:

11 PRELIMINARY STATEMENT

12 OpenAI is an artificial intelligence (“AI”) research and deployment company, with a
13 mission to ensure that artificial general intelligence benefits all of humanity. OpenAI researches,
14 develops, and releases cutting edge AI technology, including ChatGPT and its underlying large
15 language models, as well as tools and best practices for the safety, alignment, and governance of
16 AI.

17 Developing a large language model like the one underlying ChatGPT requires teaching it
18 intelligence and language, such as the ability to predict, reason and solve problems, as well as
19 aligning it to human values and preferences. Teaching a model to understand language and the
20 facts that constitute humans’ collective knowledge, for instance, involves showing the model a
21 wide diversity of text, and having it try to predict the word that comes next in each of a huge
22 range of sequences. This requires an enormous amount of computation, as models review,
23 analyze, and learn from trillions of words. Through this extensive process, the model not only
24 learns how words fit together grammatically, but also how words work together to form higher-

25 ¹ It is assumed that allegations not directed to a specific OpenAI entity are directed to OpenAI
26 OpCo, L.L.C. Accordingly, except where otherwise noted, each response herein is provided on
27 behalf of OpenAI OpCo, L.L.C. No response by the other OpenAI entities is necessary as to
28 allegations directed to OpenAI OpCo, L.L.C. To the extent a response is deemed necessary,
those allegations are denied.

1 level ideas, and ultimately how sequences of words form structured thoughts or pose coherent
2 problems. In gaining fluency with predicting the next word, the model thereby learns concepts
3 and the building blocks of intelligence.

4 Eventually, given a request like, “Describe the interior of 450 Golden Gate Avenue by
5 analogy to a legal principle,” OpenAI’s GPT-4o model is able to formulate the following
6 response:

7 The interior of 450 Golden Gate Avenue, which houses the Phillip
8 Burton Federal Building and U.S. Courthouse in San Francisco,
9 can be likened to the legal principle of *stare decisis*. Just as *stare*
10 *decisis* provides a stable framework where past decisions guide
11 future rulings, the building’s design reflects a sense of order,
12 consistency, and structure. The grand, formal spaces, with their
13 clean lines and orderly layout, create a sense of continuity and
14 respect for tradition, much like how the adherence to precedent
maintains legal stability over time. The balance between the open,
airy public areas and the more private, compartmentalized offices
mirrors the balance between public accessibility to the law and the
structured, meticulous work that happens behind the scenes.

15 This response is not reproduced from any preexisting source; instead, it is the model’s
16 unique synthesis of the language and facts that it has learned.

17 Plaintiffs allege that their books were among the human knowledge shown to OpenAI’s
18 models to teach them intelligence and language. If so, that would be paradigmatic transformative
19 fair use. Processing copyrighted works to extract information about the work—such as word
20 frequencies, syntactic patterns, and thematic markers—does not infringe because it does not
21 replicate protected expression. The process of training an AI model does not involve any
22 communication of protected expression to a human audience. Nor is any such communication
23 involved in the ordinary operation of the models at issue here. The purpose of those models is not
24 to output material that already exists; there are much less computationally intensive ways to do
25 that. Instead, their purpose is to create new material that never existed before, based on an
26 understanding of language, reasoning, and the world. The models learn, as we all do, from what
27 has come before. The fair use defense exists for precisely that reason: to “encourage[] and
28

1 allow[] the development of new ideas that build on earlier ones,” thereby “fulfill[ing] copyright’s
2 very purpose.” *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1163 (9th Cir. 2007)
3 (citation and internal quotation omitted).

4 **OVERVIEW**

5 1. OpenAI admits that ChatGPT is an artificial intelligence-based service that can be
6 accessed via the internet. OpenAI denies any remaining allegations of this paragraph.

7 2. OpenAI admits that training large language models similar to those that have
8 powered ChatGPT involves teaching language to a model by breaking down a wide range of text
9 into roughly word-length “tokens,” which are then converted into numbers used as training
10 inputs, and, utilizing sophisticated statistical and computational analysis, having the model try to
11 predict the word that comes next in each of a huge range of sentences. OpenAI admits that the
12 wide range of text used for training a model is sometimes called a “training dataset.” OpenAI
13 denies any remaining allegations of this paragraph.

14 3. Denied.

15 4. To the extent the allegations in this paragraph refer to Plaintiffs or Class members,
16 OpenAI lacks knowledge or information sufficient to admit or deny, and on that basis denies
17 them. OpenAI denies any remaining allegations of this paragraph.

18 5. Denied.

19 6. Denied.

20 **JURISDICTION AND VENUE**

21 7. Admitted.

22 8. OpenAI does not dispute that jurisdiction and venue is proper in this district.
23 OpenAI also does not dispute that OpenAI, Inc. is headquartered in this district. OpenAI denies
24 any remaining allegations of this paragraph.

25 9. OpenAI does not dispute that venue is proper in this district. OpenAI denies any
26 remaining allegations of this paragraph.

PLAINTIFFS

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10. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

11. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

12. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

13. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

14. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

15. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

16. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

17. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

18. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

19. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

20. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

21. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

22. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

DEFENDANTS

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2 23. OpenAI admits that OpenAI, Inc. is a Delaware nonprofit corporation with a
3 principal place of business in San Francisco, CA. OpenAI denies any remaining allegations of
4 this paragraph.

5 24. OpenAI admits that OpenAI, L.P. was a Delaware limited partnership with a
6 principal place of business in San Francisco, CA, and is now known as OpenAI OpCo, L.L.C.
7 OpenAI denies any remaining allegations of this paragraph.

8 25. OpenAI admits that OpenAI OpCo, L.L.C. is a Delaware limited liability company
9 with a principal place of business in San Francisco, CA, and is a subsidiary of OpenAI, Inc.
10 OpenAI denies any remaining allegations of this paragraph.

11 26. OpenAI admits that OpenAI GP, L.L.C. is a Delaware limited liability company
12 with a principal place of business in San Francisco, CA, and is a subsidiary of OpenAI, Inc.
13 OpenAI denies any remaining allegations of this paragraph.

14 27. OpenAI admits that OpenAI Startup Fund I, L.P. is a Delaware limited partnership
15 with a principal place of business in San Francisco, CA. OpenAI denies any remaining
16 allegations of this paragraph.

17 28. OpenAI admits that OpenAI Startup Fund GP I, L.L.C. is a Delaware limited
18 liability company with a principal place of business in San Francisco, CA. OpenAI admits that
19 OpenAI Startup Fund GP I, L.L.C. is the general partner of OpenAI Startup Fund I, L.P. OpenAI
20 denies any remaining allegations of this paragraph.

21 29. OpenAI admits that OpenAI Startup Fund Management, LLC is a Delaware
22 limited liability company with a principal place of business in San Francisco, CA. OpenAI denies
23 any remaining allegations of this paragraph.

24 **AGENTS AND CO-CONSPIRATORS**

25 30. Denied.

26 31. Denied.

FACTUAL ALLEGATIONS

1
2 32. OpenAI admits that it is an artificial intelligence research and deployment
3 company with a mission to ensure that artificial general intelligence benefits all of humanity, and
4 that as part of its mission, OpenAI develops leading foundation models and makes their
5 capabilities available in safe and beneficial ways to people around the world. OpenAI admits that
6 the term artificial intelligence may be abbreviated as “AI.” OpenAI denies any remaining
7 allegations of this paragraph.

8 33. OpenAI admits that, as part of its mission, OpenAI develops leading foundation
9 models, including advanced language models. OpenAI admits that developing an advanced
10 language model requires teaching it intelligence, such as the ability to predict, reason, and solve
11 problems. OpenAI admits that this is done in a process called “pre-training.” OpenAI admits that
12 pre-training teaches language to a model by showing a model a wide range of text, and having it
13 try to predict the word that comes next in each of a huge range of sequences. OpenAI admits that,
14 during pre-training, a model reviews, analyzes, and learns from trillions of words. OpenAI
15 admits that a model thereby learns how words fit together grammatically, how words work
16 together to form higher-level ideas, and how sequences of words form structured thoughts or pose
17 coherent problems. OpenAI admits that an advanced language model is made up of large strings
18 of numbers, called “weights” or “parameters,” and code that interprets and executes these
19 numbers. OpenAI admits that, as a model learns from the wide range of text that it is shown,
20 some of the numbers that make up the model change slightly to reflect what it has learned, but the
21 model does not store or copy the sentences that it read during the pre-training process. OpenAI
22 admits that the wide variety of text used to pre-train a model may be called a “training dataset.”
23 OpenAI denies any remaining allegations of this paragraph.

24 34. Denied.

25 35. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
26 of this paragraph, and on that basis denies them.

1 36. OpenAI admits that GPT-1 was announced around June 2018, GPT-2 was
2 announced around February 2019, GPT-3 was announced around May 2020, GPT-3.5 was
3 announced around March 2022, and GPT-4 was announced around March 2023, and that these
4 models can be referred to as large language models. OpenAI admits that “GPT” is an
5 abbreviation of “generative pre-trained transformer.” OpenAI admits that additional models are
6 available. To the extent the allegations in this paragraph purport to refer to portions of a publicly
7 available interview, the full text of that interview speaks for itself. To the extent the allegations in
8 this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies
9 those allegations. OpenAI denies any remaining allegations of this paragraph.

10 37. OpenAI admits that large language models may be developed using (1)
11 information that is publicly available on the internet, (2) information obtained from third parties
12 via access agreements, and (3) information that users or human trainers provide. OpenAI denies
13 any remaining allegations of the paragraph.

14 38. To the extent the allegations in this paragraph purport to quote from portions of a
15 publicly available research paper, the full text of that paper speaks for itself. To the extent the
16 allegations in this paragraph purport to summarize or characterize or are inconsistent with it,
17 OpenAI denies those allegations. To the extent the allegations in this paragraph are directed at
18 Google, Amazon, or “others,” OpenAI lacks knowledge or information sufficient to admit or
19 deny those allegations and on that basis denies them. OpenAI denies any remaining allegations
20 of this paragraph.

21 39. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
22 of this paragraph, and on that basis denies them.

23 40. To the extent the allegations in this paragraph purport to quote from portions of a
24 publicly available research paper, the full text of that paper speaks for itself. To the extent the
25 allegations in this paragraph purport to summarize or are inconsistent with it, OpenAI denies
26 those allegations. OpenAI denies any remaining allegations of this paragraph.

1 41. To the extent the allegations in this paragraph purport to quote from portions of a
2 publicly available research paper, the full text of that paper speaks for itself. To the extent the
3 allegations in this paragraph purport to summarize or are inconsistent with it, OpenAI denies
4 those allegations. OpenAI denies any remaining allegations of this paragraph.

5 42. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
6 of this paragraph, and on that basis denies them.

7 43. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
8 of this paragraph, and on that basis denies them.

9 44. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
10 of this paragraph, and on that basis denies them.

11 45. To the extent the allegations in this paragraph purport to quote from a publicly
12 available research paper, the full text of that paper speaks for itself. To the extent the allegations
13 in this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies
14 those allegations. OpenAI denies any remaining allegations of this paragraph.

15 **INTERROGATING THE OPENAI LANGUAGE MODELS USING CHATGPT**

16 46. OpenAI admits that ChatGPT is an artificial intelligence service that can be
17 accessed through the internet. OpenAI admits that ChatGPT has been developed in a way that
18 allows it to understand and respond to user questions and instructions. OpenAI admits that a
19 subscription plan for ChatGPT called “ChatGPT Plus” is available for \$20 per month. OpenAI
20 denies any remaining allegations of this paragraph.

21 47. OpenAI admits that the OpenAI API allows developers to integrate ChatGPT into
22 their own applications, products, or services. OpenAI denies any remaining allegations of this
23 paragraph.

24 48. OpenAI admits that ChatGPT has been developed in a way that allows it to
25 understand and respond to user questions and instructions provided in the form of text prompts.
26 OpenAI denies any remaining allegations of this paragraph.

1 49. OpenAI admits that the pre-training process teaches language to a model by
2 showing a model a wide range of text, and having it try to predict the word that comes next in
3 each of a huge range of sequences. OpenAI admits that, during pre-training, a model reviews,
4 analyzes, and learns from trillions of words. OpenAI admits that a model thereby learns how
5 words fit together grammatically, how words work together to form higher-level ideas, and how
6 sequences of words form structured thoughts or pose coherent problems. OpenAI admits that an
7 advanced language model is made up of large strings of numbers, called “weights” or
8 “parameters,” and code that interprets and executes these numbers. OpenAI admits that, as a
9 model learns from the wide range of text that it is shown, some of the numbers that make up the
10 model change slightly to reflect what it has learned, but the model does not store or copy the
11 sentences that it read during the pre-training process. OpenAI denies any remaining allegations
12 of this paragraph.

13 50. Denied.

14 51. To the extent the allegations in this paragraph are directed to Plaintiffs or Class
15 members, OpenAI lacks knowledge or information sufficient to admit or deny those allegations,
16 and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

17 **CLASS ALLEGATIONS**

18 52. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
19 of this paragraph about Plaintiffs, and on that basis denies them. This paragraph contains legal
20 conclusions for which no response is required. To the extent a response is deemed required,
21 OpenAI denies the allegations. OpenAI denies any remaining allegations of this paragraph.

22 53. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
23 of this paragraph about Plaintiffs or Class members, and on that basis denies them. OpenAI
24 denies any remaining allegations of this paragraph.

25 54. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
26 of this paragraph about Plaintiffs or Class members, and on that basis denies them.

1 55. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
2 of this paragraph about Plaintiffs or Class members, and on that basis denies them. OpenAI
3 denies any remaining allegations of this paragraph.

4 56. Denied.

5 57. Denied.

6 58. Denied.

7 59. Denied.

8 60. Denied.

9 61. Denied.

10 **COUNT 1**

11 **DIRECT COPYRIGHT INFRINGEMENT**

12 **17 U.S.C. § 501**

13 62. This paragraph incorporates by reference the preceding factual allegations, and
14 thus no response is required. To the extent this paragraph calls for a response, OpenAI
15 incorporates by reference its responses to paragraphs 1-61.

16 63. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
17 of this paragraph, and on that basis denies them.

18 64. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
19 of this paragraph about Plaintiffs, and on that basis, denies them.

20 65. Denied.

21 66. Denied.

22 67. Denied.

23 68. Denied.

24 69. Denied.

COUNT 2

UCL — UNFAIR COMPETITION

Cal. Bus. & Prof. Code §§ 17200 et seq.

70. This paragraph relates to a claim that has been dismissed, and incorporates by reference the preceding factual allegations, and thus no response is required. To the extent this paragraph calls for a response, OpenAI incorporates by reference its responses to paragraphs 1-69.

71. This paragraph relates to a claim that has been dismissed, and thus no response is required. To the extent a response is required: denied.

72. This paragraph relates to a claim that has been dismissed, and thus no response is required. To the extent a response is required: denied.

73. This paragraph relates to a claim that has been dismissed, and thus no response is required. To the extent a response is required: denied.

74. This paragraph relates to a claim that has been dismissed, and thus no response is required. To the extent a response is required: denied.

DEMAND FOR JUDGMENT

In response to the Demand for Judgment, OpenAI denies that Plaintiffs are entitled to the requested relief, or to any relief whatsoever.

JURY TRIAL DEMANDED

With respect to the jury demand contained in Plaintiffs' First Consolidated Amended Complaint, OpenAI states that no response is required. To the extent a response is deemed required, OpenAI denies that Plaintiffs' claim is properly triable to a jury.

AFFIRMATIVE DEFENSES

In further answer to the allegations made by Plaintiffs in the First Consolidated Amended Complaint, OpenAI asserts the following affirmative defenses. OpenAI does not concede that it has the burden of proof on the defenses listed below:

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FIRST AFFIRMATIVE DEFENSE

To the extent there is copying of copyrightable expression, that copying constitutes fair use.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs’ claims fail, in whole or in part, because the complained-of use was validly licensed by express or implied license.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs’ claims are barred, in whole or in part, by the doctrines of waiver, abandonment, and/or forfeiture.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims are barred, in whole or in part, by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims fail, in whole or in part, because OpenAI’s conduct was innocent, not willful.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs’ remedies are barred at least in part by the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery of damages because of and to the extent of their failure to mitigate their alleged damages (to which, in any event, they are not entitled).

EIGHTH AFFIRMATIVE DEFENSE

Some or all of the material in which Plaintiffs claim copyright is in the public domain.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims of copyright infringement are barred or limited by the doctrine of merger.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims of copyright infringement are barred or limited by the idea/expression dichotomy.

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ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims of copyright infringement are barred or limited because the material in which Plaintiffs claim copyright constitutes “scenes a faire.”

TWELFTH AFFIRMATIVE DEFENSE

To the extent there is copying of copyrightable expression, that copying is de minimis.

1 Dated: August 27, 2024

MORRISON & FOERSTER LLP

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