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

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

Case No. 3:23-cv-03417-VC

**DEFENDANT META PLATFORMS INC.’S
 ANSWER TO CORRECTED SECOND
 CONSOLIDATED AMENDED COMPLAINT**

1 Defendant Meta Platforms, Inc. (“Meta”), by and through counsel, hereby responds to the
2 Corrected Second Consolidated Amended Complaint (“SCAC”) filed by Plaintiffs Richard Kadrey,
3 Sarah Silverman, Christopher Golden, Ta-Nehisi Coates, Junot Díaz, Andrew Sean Greer, David
4 Henry Hwang, Matthew Klam, Laura Lippman, Rachel Louise Snyder, Jacqueline Woodson, and
5 Lysa TerKeurst (together, “Plaintiffs”). Unless specifically admitted, Meta denies each of the
6 allegations in the SCAC.

7 I. OVERVIEW¹

8 1. Meta admits that it has created a series of large language models (“LLMs”) under
9 the name Llama. Except as expressly admitted, Meta denies the allegations in paragraph 1.

10 2. Meta admits that some LLMs have been trained using training datasets composed
11 of large amounts of text data. As paragraph 2 pertains generally to LLMs and not any particular
12 LLM of Meta, Meta lacks knowledge and information sufficient to form a belief as to the truth of
13 the remaining allegations set forth in paragraph 2, and on that basis denies the same.

14 3. Meta admits that some LLMs have been trained using training data and were able
15 to generate outputs after training. As paragraph 3 pertains generally to LLMs and not any particular
16 LLM of Meta, Meta lacks knowledge and information sufficient to form a belief as to the truth of
17 the remaining allegations set forth in paragraph 3, and on that basis denies the same.

18 4. Meta lacks knowledge and information sufficient to form a belief as to the truth of
19 the allegations set forth in paragraph 4, and on that basis denies the same.

20 5. Meta lacks knowledge and information sufficient to form a belief as to the truth of
21 the allegations set forth in paragraph 5, and on that basis denies the same.

22 II. JURISDICTION & VENUE

23 6. The allegations in this paragraph state a legal conclusion to which no response is
24 required. To the extent a response is deemed required, Meta admits that this action purports to arise
25 under the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*, and that the Court has
26 original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, provided that
27

28 ¹ Meta includes the headings as listed in the FCAC without any admission as to the accuracy or
appropriateness of the headings.

1 standing and other requirements are met. Except as expressly admitted, Meta denies the remaining
2 allegations set forth in paragraph 6.

3 7. The allegations in this paragraph state a legal conclusion to which no response is
4 required. To the extent a response is deemed to be required, Meta admits that this Court has
5 personal jurisdiction over it with respect to the instant action and that venue is proper in this judicial
6 district. Except as expressly admitted, Meta denies the allegations in paragraph 7.

7 8. The allegations in this paragraph state a legal conclusion to which no response is
8 required. To the extent a response is deemed to be required, Meta admits that assignment of this
9 case to the San Francisco Division is proper, and that Meta is headquartered in San Mateo County.
10 Except as expressly admitted, Meta denies the allegations in paragraph 8.

11 III. PARTIES

12 A. Plaintiffs

13 9. Meta lacks knowledge and information sufficient to form a belief as to the truth of
14 the allegations set forth in paragraph 9, and on that basis denies the same.

15 10. Meta lacks knowledge and information sufficient to form a belief as to the truth of
16 the allegations set forth in paragraph 10, and on that basis denies the same.

17 11. Meta lacks knowledge and information sufficient to form a belief as to the truth of
18 the allegations set forth in paragraph 11, and on that basis denies the same.

19 12. Paragraph 12 contains no allegations, and therefore no response is required.

20 13. Meta lacks knowledge and information sufficient to form a belief as to the truth of
21 the allegations set forth in paragraph 13, and on that basis denies the same.

22 14. Meta lacks knowledge and information sufficient to form a belief as to the truth of
23 the allegations set forth in paragraph 14, and on that basis denies the same.

24 15. Meta lacks knowledge and information sufficient to form a belief as to the truth of
25 the allegations set forth in paragraph 15, and on that basis denies the same.

26 16. Meta lacks knowledge and information sufficient to form a belief as to the truth of
27 the allegations set forth in paragraph 16, and on that basis denies the same.

28

1 17. Meta lacks knowledge and information sufficient to form a belief as to the truth of
2 the allegations set forth in paragraph 17, and on that basis denies the same.

3 18. Meta lacks knowledge and information sufficient to form a belief as to the truth of
4 the allegations set forth in paragraph 18, and on that basis denies the same.

5 19. Meta lacks knowledge and information sufficient to form a belief as to the truth of
6 the allegations set forth in paragraph 19, and on that basis denies the same.

7 20. Meta lacks knowledge and information sufficient to form a belief as to the truth of
8 the allegations set forth in paragraph 20, and on that basis denies the same.

9 21. Meta lacks knowledge and information sufficient to form a belief as to the truth of
10 the allegations set forth in paragraph 21, and on that basis denies the same.

11 22. Meta lacks knowledge and information sufficient to form a belief as to the truth of
12 the allegations set forth in paragraph 22 or as to the content of Exhibit A, and on that basis denies
13 the same.

14 **B. Defendant**

15 23. Meta admits the allegations in paragraph 23.

16 **IV. AGENTS AND CO-CONSPIRATORS**

17 24. Meta denies the allegations in paragraph 24.

18 25. Meta denies the allegations in paragraph 25.

19 **V. FACTUAL ALLEGATIONS**

20 26. Meta admits that it creates, markets, and sells software and hardware technology
21 products, and that its software and services include Facebook, Instagram, and Horizon Worlds,
22 among others. Meta admits that it has an artificial intelligence research group that conducts
23 research on artificial intelligence technologies. Meta also admits that it has created and distributed
24 the Llama 1 and Llama 2 artificial intelligence software products. Meta denies the remaining
25 allegations and characterizations in paragraph 26.

26 27. Meta admits that “artificial intelligence” is commonly abbreviated “AI.” As
27 paragraph 27 pertains generally to AI and not any particular AI technologies of Meta, Meta lacks
28

1 knowledge and information sufficient to form a belief as to the truth of the remaining allegations
2 set forth in paragraph 3, and on that basis denies the same.

3 28. Meta admits that it publicly released the initial version of Llama in February 2023,
4 and that it has adopted the capitalization convention “Llama” in addition to “LLaMA.” Meta
5 further admits that it uses the name “Llama” to refer to Llama 1 and Llama 2, each of which is an
6 example of AI software. Meta admits that the corpus of material used to train an LLM has been
7 referred to as a “training dataset.” Except as expressly admitted, Meta denies the allegations in
8 paragraph 28.

9 29. The allegations in this paragraph state a legal conclusion to which no response is
10 required. To the extent a response is deemed required, Meta denies that its use of copyrighted
11 works to train Llama required consent, credit, or compensation. Meta lacks knowledge and
12 information sufficient to form a belief as to the truth of the remaining allegations set forth in
13 paragraph 29, and on that basis denies the same.

14 30. Meta admits that Llama 1 was trained prior to its public release in February 2023.
15 Except as expressly admitted, Meta denies the allegations in paragraph 30.

16 31. Meta admits the allegations in paragraph 31.

17 32. The allegations in paragraph 32 pertain generically to “open sourcing” and do not
18 refer to any particular open source model or open source license adopted by Meta; as such, Meta
19 lacks knowledge and information sufficient to form a belief as to the truth of the allegations set
20 forth in paragraph 32, and on that basis denies the same.

21 33. Meta admits the Llama 1 Paper discusses the Llama 1 training dataset, noting the
22 size of the training data and where some of the training data comes from, and refers to the referenced
23 Paper for information that it does and does not include. Meta further refers to the Paper itself for
24 its contents. Meta otherwise denies the allegations in paragraph 33.

25 34. To the extent the allegations set forth in this paragraph purport to summarize or
26 characterize the contents of the document located at <https://arxiv.org/pdf/2101.00027.pdf> (the
27 “EleutherAI Paper”), the document speaks for itself. Meta lacks knowledge and information
28

1 sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 34, and
2 on that basis denies the same.

3 35. To the extent the allegations set forth in this paragraph purport to summarize or
4 characterize the contents of the EleutherAI Paper, the document speaks for itself. Meta denies that
5 the EleutherAI Paper indicates that Books3 comprises 108 gigabytes of data and that it is the third
6 largest component of the Pile by size. Meta lacks knowledge and information sufficient to form a
7 belief as to the truth of the remaining allegations set forth in paragraph 35, and on that basis denies
8 the same.

9 36. To the extent the allegations set forth in this paragraph purport to summarize or
10 characterize the contents of the EleutherAI Paper, the document speaks for itself.

11 37. The allegations in this paragraph state a legal conclusion to which no response is
12 required. To the extent a response is deemed required, Meta lacks knowledge and information
13 sufficient to form a belief as to the truth of the allegations set forth in paragraph 37, and on that
14 basis denies the same.

15 38. To the extent the allegations set forth in this paragraph purport to summarize or
16 characterize the contents of the webpage located at
17 <https://twitter.com/theshawwn/status/1320282149329784833>, the webpage speaks for itself. Meta
18 lacks knowledge and information sufficient to form a belief as to the truth of the remaining
19 allegations set forth in paragraph 38, and on that basis denies the same.

20 39. The allegations in this paragraph state a legal conclusion to which no response is
21 required. To the extent a response is deemed required, Meta denies that it infringed Plaintiffs'
22 alleged copyrights. Meta lacks knowledge and information sufficient to form a belief as to the truth
23 of the remaining allegations set forth in paragraph 39, and on that basis denies the same.

24 40. To the extent the allegations set forth in this paragraph purport to summarize or
25 characterize the contents of the webpage located at
26 <https://news.ycombinator.com/item?id=36197731>, the webpage speaks for itself. Meta lacks
27 knowledge and information sufficient to form a belief as to the truth of the remaining allegations
28 set forth in paragraph 40, and on that basis denies the same.

1 41. Meta lacks knowledge and information sufficient to form a belief as to the truth of
2 the allegations set forth in paragraph 41, and on that basis denies the same.

3 42. Meta lacks knowledge and information sufficient to form a belief as to the truth of
4 the allegations set forth in paragraph 42, and on that basis denies the same.

5 43. Meta lacks knowledge and information sufficient to form a belief as to the truth of
6 the allegations set forth in paragraph 43, and on that basis denies the same.

7 44. Meta admits that the Llama 1 Paper states that the dataset used to train Llama 1 was
8 publicly available. The remaining allegations in this paragraph 44 state legal conclusions to which
9 no response is required. To the extent a response is deemed required, Meta admits that a work in
10 the public domain in the United States is not protected by copyright in the United States, and that
11 a work that is publicly available may be protected by copyright. Except as expressly admitted,
12 Meta denies the allegations in paragraph 44.

13 45. The allegations in this paragraph state a legal conclusion to which no response is
14 required. To the extent a response is deemed required, Meta admits that is aware of the conceptual
15 distinction between works in the “public domain” and works that are “publicly available.” Except
16 as expressly admitted, Meta denies the allegations in paragraph 45.

17 46. Meta denies that it is misleading to describe Books3 as “publicly available.” Meta
18 lacks knowledge and information sufficient to form a belief as to the truth of the remaining
19 allegations set forth in paragraph 46, and on that basis denies the same.

20 47. Meta denies the allegations in paragraph 47.

21 48. Meta lacks knowledge and information sufficient to form a belief as to the truth of
22 the allegations set forth in paragraph 48, and on that basis denies the same.

23 49. Meta lacks knowledge and information sufficient to form a belief as to the truth of
24 the allegations set forth in paragraph 49, and on that basis denies the same.

25 50. Meta lacks knowledge and information sufficient to form a belief as to the truth of
26 the allegations set forth in paragraph 50, and on that basis denies the same.

27 51. Meta lacks knowledge and information sufficient to form a belief as to the truth of
28 the allegations set forth in paragraph 51, and on that basis denies the same.

1 52. Meta lacks knowledge and information sufficient to form a belief as to the truth of
2 the allegations set forth in paragraph 52, and on that basis denies the same.

3 53. Meta lacks knowledge and information sufficient to form a belief as to the truth of
4 the allegations set forth in paragraph 53, and on that basis denies the same.

5 54. Meta lacks knowledge and information sufficient to form a belief as to the truth of
6 the allegations set forth in paragraph 54, and on that basis denies the same.

7 55. Paragraph 55 contains no allegations, and therefore no response is required.

8 56. Meta lacks knowledge and information sufficient to form a belief as to the truth of
9 the allegations set forth in paragraph 56, and on that basis denies the same.

10 57. Paragraph 57 contains no allegations, and therefore no response is required.

11 58. Meta lacks knowledge and information sufficient to form a belief as to the truth of
12 the allegations set forth in paragraph 58, and on that basis denies the same.

13 59. Meta lacks knowledge and information sufficient to form a belief as to the truth of
14 the allegations set forth in paragraph 59, and on that basis denies the same.

15 60. Paragraph 60 contains no allegations, and therefore no response is required.

16 61. Paragraph 61 contains no allegations, and therefore no response is required.

17 62. Paragraph 62 contains no allegations, and therefore no response is required.

18 63. The first sentence of Paragraph 63 contains no allegations, and therefore no
19 response is required to that sentence. As to the remainder of Paragraph 63, Meta admits that
20 portions of Books3 were used as training data for Llama 1 prior to its release in February 2023.
21 Meta lacks knowledge and information sufficient to form a belief as to the truth of the remaining
22 allegations set forth in paragraph 63, and on that basis denies the same.

23 64. Meta lacks knowledge and information sufficient to form a belief as to the truth of
24 the allegations set forth in paragraph 64, and on that basis denies the same.

25 65. Meta admits the allegations in paragraph 65.

26 66. Meta admits that it distributed Llama 1 to certain people and entities, and that the
27 names of those people and entities were not disclosed. Except as expressly admitted, Meta denies
28 the allegations in paragraph 66.

1 67. Meta admits the allegations in paragraph 67, except that it denies any suggestion
2 that it had a role in the leak referenced in paragraph 67.

3 68. Meta admits that a representative of Meta submitted a takedown notice to Github
4 in March 2023 concerning the publication of a tool that helped individuals access leaked model
5 weights for Llama 1. That notice included a representation that Meta owned rights in the subject
6 of the notice. Except as expressly admitted, Meta denies the allegations in paragraph 68.

7 69. Meta admits that portions of Books3, among many other materials, were used as
8 training data for Llama 2 prior to its public release in July 2023. Except as expressly admitted,
9 Meta denies the allegations in paragraph 69.

10 70. To the extent the allegations set forth in this paragraph purport to summarize or
11 characterize the contents of the document located at <https://arxiv.org/pdf/2307.09288.pdf> (the
12 “Llama 2 Paper”), the document speaks for itself.

13 71. To the extent the allegations set forth in this paragraph purport to summarize or
14 characterize the contents of the webpage located at <https://ai.meta.com/llama/faq/>, the webpage
15 speaks for itself. Meta admits that it has made Llama 2 available under a license different from the
16 license applicable to Llama 1, and the terms of those licenses speak for themselves. Except as
17 expressly admitted, Meta denies the allegations in paragraph 71.

18 72. To the extent the allegations set forth in this paragraph purport to summarize or
19 characterize the contents of the webpage located at <https://ai.meta.com/llama/faq/>, the webpage
20 speaks for itself.

21 73. To the extent the allegations set forth in this paragraph purport to summarize or
22 characterize the contents of the Llama 2 Paper, the document speaks for itself. Meta admits that
23 Llama 2, like Llama 1, was trained on a mix of publicly available data. Except as expressly
24 admitted, Meta denies the allegations in paragraph 73.

25 74. To the extent the allegations set forth in this paragraph purport to summarize or
26 characterize the contents of Meta’s October 26, 2023 Form 10-Q, such document speaks for itself.
27 Meta denies the remaining allegations in paragraph 74.

28

1 75. To the extent the allegations set forth in this paragraph purport to summarize or
2 characterize the contents of the Llama 2 Paper, the document speaks for itself. Meta denies the
3 Plaintiffs' characterization of the paper and the remaining allegations in paragraph 75.

4 76. Meta denies the allegations in paragraph 76.

5 VI. CLAIM FOR RELIEF

6 Direct Copyright Infringement

7 17 U.S.C. § 101 et seq.

8 77. Meta incorporates by reference its responses to paragraphs 1 through 76 above as
9 though fully set forth herein.

10 78. Meta lacks knowledge and information sufficient to form a belief as to the truth of
11 the allegations set forth in paragraph 78, and on that basis denies the same.

12 79. Meta admits that it used portions of the Books3 dataset, among many other
13 materials, to train Llama 1 and Llama 2. Meta lacks knowledge and information sufficient to form
14 a belief as to the truth of the remaining allegations set forth in paragraph 79, and on that basis denies
15 the same.

16 80. Meta lacks knowledge and information sufficient to form a belief as to the truth of
17 the allegations set forth in paragraph 80, and on that basis denies the same.²

18 81. Meta lacks knowledge and information sufficient to form a belief as to the truth of
19 the allegations set forth in paragraph 81, and on that basis denies the same.

20 82. Meta denies the allegations in paragraph 82.

21 VII. CLASS ALLEGATIONS

22 A. Class Definition

23 83. The allegations in paragraph 83 state legal conclusions or arguments to which no
24 response is required. To the extent a response is deemed required, Meta denies that this action is
25 suitable for class treatment under Rule 23.

26
27 ² Plaintiffs have expressly confirmed that this paragraph is not intended to assert that Meta created
28 any derivative works or is liable for "derivative infringement" (ECF No. 71 at 14-15), a claim that
was dismissed by the Court.

1 84. The allegations in paragraph 84 state legal conclusions or arguments to which no
2 response is required.

3 **B. Numerosity**

4 85. The allegations in paragraph 85 state legal conclusions or arguments to which no
5 response is required. To the extent a response is deemed required, Meta denies that it possesses
6 information concerning the exact number of members of Plaintiffs' putative class. Meta lacks
7 knowledge and information sufficient to form a belief as to the truth of the remaining allegations
8 set forth in paragraph 85, and on that basis denies the same.

9 **C. Typicality**

10 86. The allegations in paragraph 86 state legal conclusions or arguments to which no
11 response is required. To the extent a response is deemed required, Meta denies the allegations in
12 paragraph 86.

13 **D. Adequacy**

14 87. The allegations in paragraph 87 state legal conclusions or arguments to which no
15 response is required. To the extent a response is deemed required, Meta denies the allegations in
16 paragraph 87.

17 **E. Commonality and Predominance**

18 88. The allegations in paragraph 88 state legal conclusions or arguments to which no
19 response is required. To the extent a response is deemed required, Meta denies that this action is
20 suitable for class treatment under Rule 23.

21 89. The allegations in paragraph 89 state legal conclusions or arguments to which no
22 response is required. To the extent a response is deemed required, Meta denies the allegations in
23 paragraph 89.

24 **F. Other Class Considerations**

25 90. The allegations in paragraph 90 state legal conclusions or arguments to which no
26 response is required. To the extent a response is deemed required, Meta denies the allegations in
27 paragraph 90.

28

1 formalities, Meta reserves its right to defend against Plaintiffs’ claims on any or all of these
2 grounds.

3 **THIRD AFFIRMATIVE DEFENSE**

4 Plaintiffs’ claims are barred or limited to the extent that the works over which they assert
5 copyright and copyright infringement were subject of a license or permission given to Defendant
6 or its agents.

7 **FOURTH AFFIRMATIVE DEFENSE**

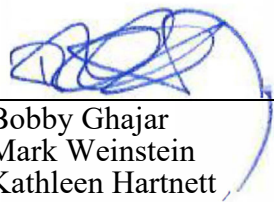
8 Some or all of Plaintiffs’ claims are barred to the extent certain of the Plaintiffs do not own
9 the copyright and/or electronic rights for some of all of the works, and/or otherwise lack standing
10 to assert the claims herein.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 Any allegation that Meta created a derivative work fails to state a claim and the Court
13 already dismissed such allegations.

14 Dated: September 16, 2024

COOLEY LLP

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DEMAND FOR TRIAL BY JURY

Meta hereby demands a trial by jury on all claims, counterclaims, defenses, and issues in this action so triable.

Dated: September 16, 2024

COOLEY LLP

By: 

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