

1 [Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

12 RICHARD KADREY, *et al.*,

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

13 Individual and Representative
Plaintiffs,

JOINT CASE MANAGEMENT STATEMENT

V.

16 META PLATFORMS, INC, a Delaware
corporation,

17 Defendant.

19 Pursuant to Civ. L.R. 16-9(a) and Dkt. No. 656, Plaintiffs Richard Kadrey, Sarah
20 Silverman, Christopher Golden, Jacqueline Woodson, Andrew Sean Greer, Rachel Louise
21 Snyder, David Henry Hwang, Ta-Nehisi Coates, Laura Lippman, Matthew Klam, Junot Díaz,
22 Lysa Terkeurst and Christopher Farnsworth (“Plaintiffs”); and Defendant Meta Platforms, Inc.
23 (“Meta”) (collectively, the “Parties”), by and through their respective counsel, hereby submit this
24 Case Management Statement in advance of the Case Management Conference scheduled for
25 December 19, 2025.

A. Jurisdiction, Venue, and Service

1 This Court has subject matter jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1331
 2 and 1338(a) because this action arises under the Copyright Act of 1976, 17 U.S.C. § 101, *et seq.*
 3 Meta does not challenge personal jurisdiction.

4 Venue is proper under 28 U.S.C. § 1400(a) because Meta resides or may be found in this
 5 District. Venue is also proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the
 6 events giving rise to Plaintiffs' claims occurred in this District.

7 No parties remain to be served.

8 **B. Facts**

9 **Plaintiffs' Statement:** This case is about whether Meta's reproduction, making available,
 10 and distribution of copyrighted written works is copyright infringement. Following the Court's
 11 summary judgment orders (Dkt. 598, 601), the parties have focused on Meta's reproduction,
 12 making available, and distribution of copyrighted written works during its torrenting of those
 13 works. The Court has not yet ruled on such non-training uses of copyrighted written works.

14 Meta downloaded a massive volume of pirated written works—including copyrighted
 15 works authored by Plaintiffs and proposed Class Members—from shadow libraries through a
 16 process called torrenting. Because Meta used torrenting to download Plaintiffs and proposed
 17 Class Members' copyrighted written works, it also made available, reproduced, and distributed
 18 those same works to third-party users. Meta acquired Plaintiffs and proposed Class Members'
 19 copyrighted written works for non-training uses. In these ways, Meta has reproduced, made
 20 available, and distributed Plaintiffs' and the proposed Class's works without consent or
 21 compensation.

22 To the extent that Meta denies that it uploaded and engaged in non-training uses of
 23 Plaintiff's and class members works, the upcoming expert reports and summary judgment
 24 briefing will thoroughly rebut Meta's factual contentions. Plaintiffs have never "abandoned" the
 25 truthful allegation that Meta uploaded works from the seeding phase of torrenting. To the
 26 contrary, even Meta's own expert has never argued that Meta's torrenting settings prevented
 27 seeding.

28

1 **Meta’s Statement:** Meta denies that it distributed Plaintiffs’ works when it downloaded
2 training data for Llama using torrents. Plaintiffs have served two expert reports in this case relating
3 to Meta’s torrenting but have not made any showing that any of their works were actually
4 distributed. Plaintiffs first alleged that Meta distributed their works through “seeding,” i.e.,
5 uploading of their works after completion of the download of a torrent. (Third Amended Compl.,
6 Dkt. 407, (paragraph) 87.) But Plaintiffs were later forced to abandon that theory and admitted to
7 the Court that Meta used a script for torrenting that “worked to prevent ‘seeding’ the pirated data
8 after downloading was complete.” (Dkt. 482, 13.) Plaintiffs then pivoted to a second theory that
9 Meta uploaded content while it was torrenting (leeching), but did not present evidence of (or even
10 allege) actual distribution of any Plaintiff work. (Dkt. 489, 34-35.) Plaintiffs will have an
11 opportunity to serve a third expert report on torrenting, and as with Plaintiffs’ two previous reports,
12 Meta will respond accordingly and in accordance with the Court’s schedule.

13 Meta is also puzzled by Plaintiffs' allegation above that Meta acquired Plaintiffs' and
14 Proposed Class Members' works for "non-training uses," as this appears to retread ground resolved
15 by the Court's summary judgment orders (Dkt. 598, 601) and does not relate to the sole remaining
16 claim relating to Meta's torrenting of Plaintiffs' works.

C. Legal Issues

18 **Plaintiffs' Statement:** Following the Court's summary judgment orders (Dkt. 598, 601),
19 the sole remaining legal issues presented in this case arise out of Meta's torrenting copyrighted
20 written works without copyright owners' authorization using BitTorrent default settings and
21 Meta's making available and uploading/distribution (which also entails further copying) of those
22 works, as well as multiple (sometimes dozens of) copies of each Asserted Work and never using
23 those additional copies for any purpose other than making available and uploading/distribution,
24 and storing them. The related issues are:

25 1. Whether Meta thereby infringed Plaintiffs' copyrighted written works under 17
26 U.S.C. § 106;
27 2. Whether Meta's conduct was knowing or willful, 17 U.S.C. § 106; and
28 3. Whether Plaintiffs may certify a class and subclass(es) under Rule 23 of the

1 Federal Rules of Civil Procedure.

2 Meta has never raised any factual or legal basis to assert a fair use defense for this portion
3 of the case, and Plaintiffs therefore do not understand fair use to be at issue.

4 **Meta's Statement:** Following the Court's summary judgment orders (Dkt. 598, 601), the
5 sole remaining legal issues presented in this case arise out of Meta's torrenting of Plaintiffs'
6 copyrighted written works without their authorization, which Plaintiffs allege resulted in those
7 works being uploaded/distributed and/or made available to third parties. The legal issues are:

- 8 1. Whether Meta thereby infringed Plaintiffs' copyrighted written works under 17
9 U.S.C. § 106;
- 10 2. Whether Meta's conduct was willful, 17 U.S.C. § 106;
- 11 3. Whether Meta's conduct constituted fair use, 17 U.S.C. § 107; and
- 12 4. Whether Plaintiffs may certify a class and subclass(es) under Rule 23 of the
13 Federal Rules of Civil Procedure.

14 Per below, Meta has informed Plaintiffs that it will be asserting a fair use defense based
15 on its current understanding of Plaintiff's remaining claim and theories.

16 **D. Anticipated Motions**

17 **Plaintiffs' Statement:** Based on recent discovery, Plaintiffs filed their Motion for Leave to
18 File Fourth Amended Consolidated Complaint on December 11, 2025. Plaintiffs thereby seek to:
19 (1) limit the proposed class to rightsholders in certain written works with registered copyrights; (2)
20 add a cause of action for contributory copyright infringement to conform to proof; and (3) add three
21 of the named plaintiffs' wholly-owned loan-out companies as additional plaintiffs (where those
22 companies are the registered copyright owners).

23 Plaintiffs also anticipate motions—at the appropriate time—for summary judgment and for
24 class certification.

25 Although Plaintiffs have asked whether Meta intends to raise a fair use defense since at least
26 August 2025, Meta has not indicated whether it will raise a fair use defense based on its non-training
27 uploading and uses of copyrighted works. *See* Hearing Tr. (Nov. 10, 2025), at 39:4-40:5. On
28 December 10, 2025, Meta finally answered by stating that it may raise fair use for the first time in

1 this Joint CMC Statement. But Meta has not sought leave to amend its prior interrogatory responses
 2 and *still has not identified any legal or factual basis for any purported fair use defense to torrenting*
 3 *and/or any other non-training uses of copyrighted works.* If Meta asserts a fair use defense,
 4 Plaintiffs may file a motion for an order to show cause.

5 ***Meta's Statement:*** The contours of Plaintiffs' remaining torrenting-based claim have been
 6 evolving. Over the course of the parties' recent meet and confer since the November 10 conference,
 7 and now in their proposed Fourth Amended Complaint, Plaintiffs have identified multiple legal
 8 theories, including actual distribution, making available and the alleged creation of a transitory
 9 copy during the torrenting process, but Meta has yet to be provided with an articulation of the facts
 10 or expert opinion supporting these theories. During the parties' meet and confer on December 10,
 11 Meta informed Plaintiffs that it will be asserting a fair use defense based on its current
 12 understanding of Plaintiff's remaining claim and theories. Plaintiffs' prior contention interrogatory
 13 on fair use was propounded, and Meta responded, prior to the close of fact discovery and before
 14 there was any claim in this case based on torrenting or unauthorized distribution. Despite Plaintiffs'
 15 requesting (and receiving) additional discovery on torrenting after the close of discovery, Plaintiffs
 16 have not sought to propound further discovery on Meta's contentions relating to fair
 17 use. Nevertheless, to the extent Plaintiffs contend that their prior contention interrogatories apply
 18 to the new distribution claim based on torrenting, Meta is willing to supplement its response in
 19 accordance with Rule 26(e) to address it.

20 Meta will oppose the motion to amend. Meta also anticipates motions for summary
 21 judgment in accordance with the Court's schedule. Meta also anticipates moving for leave to serve
 22 discovery directed to any new claims and allegations to the extent Plaintiffs' motion for leave to
 23 amend is granted over Meta's objection.

24 **E. Amendments to Pleadings**

25 The Third Amended Consolidated Complaint is the current operative Complaint. *See* Dkt.
 26 407. Plaintiffs' Motion for Leave to File Fourth Amended Consolidated Complaint is currently
 27 pending.

28

F. Evidence Preservation

The Parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information and have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in the action.

Plaintiffs' Statement: Plaintiffs believe an evidence preservation issue exists regarding Meta's server and/or network data that is potentially relevant to Meta's torrenting activity, which Plaintiffs discussed in their Summary Judgment Opposition and Reply. Dkt. No. 575 at 7-8.¹ Plaintiffs further believe that Meta's response mischaracterizes the ESI order which excludes network and server logs related to the acquisition of Plaintiffs' works from the exception to preserve such logs. Dkt. 101. As discovery related to Meta's torrenting is ongoing, Plaintiffs continue to assess whether there are additional, related preservation issues.

Meta’s Statement: Meta addressed this purported issue in its summary judgment briefing (Dkt. 572 at 5-6, n. 5); there are no open preservation issues in Meta’s view.

G. Disclosures

The Parties exchanged initial disclosures on December 1, 2023 pursuant to Rule 26(a)(1)(A). The Parties have periodically supplemented their initial disclosures since that time and will continue to supplement as necessary, as required by Rule 26(e).

H. Discovery

1. Training-related Discovery

The Parties conducted fact and expert discovery regarding Meta's use of copyrighted written works to train its large language models (LLMs) before filing their summary judgment motions. Fact training-related discovery concluded on December 13, 2024, with limited re-openings thereafter for discrete additional issues. Expert training-related discovery concluded on March 7, 2025.

2. Torrenting-related Discovery

¹ Plaintiffs addressed Meta’s response in its MSJ hearing slides. Dkt. 588-1 at 27 (explaining that in citing the ESI Order, Meta omitted relevant language applicable to the preservation of this type of data).

1 The parties agree that additional torrenting-related fact and expert discovery is
 2 appropriate. On November 6, 2025, the Court entered a Stipulation and Order Regarding the
 3 Case Management Schedule (Dkt. 641), which extended the discovery deadlines due to additional
 4 evidence of torrenting from Anna’s Archive and Library Genesis (the “New Evidence”). Meta
 5 has proposed, and Plaintiffs have agreed, to extend this schedule by approximately ten (10) more
 6 weeks to complete pending discovery that Meta has voluntarily agreed to provide Plaintiffs,
 7 including additional custodial document collections and searches, additional computer and server
 8 file searches, and searches for additional log files. (Dkt. 660.)

9 Pursuant to the Court’s Order Granting Plaintiffs’ Motion for Additional Discovery (Dkt.
 10 647), Plaintiffs intend to take a Rule 30(b)(6) deposition, and a Rule 30(b)(1) deposition of
 11 Xiaolan Wang. Plaintiffs have indicated that they also intend to take the depositions of two
 12 former Meta employees (Guillaume Lample and Stephen Roller), and Plaintiffs may file a motion
 13 or stipulation (and proposed order) to authorize third-party subpoenas to them.

14 **Plaintiffs’ Statement:** Plaintiffs maintain that their pending Motion for Leave to File the
 15 Fourth Amended Consolidated Complaint, if granted, will not affect the timing of this phase of
 16 discovery and will not require Plaintiffs to seek additional factual discovery, although Plaintiffs
 17 do believe an additional expert on the subject of digital piracy may assist the Court (and,
 18 eventually, the Jury). And, the three affected Plaintiffs have already been subject to discovery
 19 regarding their loan-out companies, and do not object to additional non-duplicative discovery
 20 regarding their loan-out companies.

21 **Meta’s Statement:** Plaintiffs repeatedly represented to Meta in seeking its consent to
 22 allow Plaintiffs to file the Fourth Amended Complaint that “Plaintiffs will not seek additional fact
 23 discovery based on any of these changes and we will not seek to modify any case deadlines as a
 24 result of any of these changes.” Meta does not believe the proposed amendment is appropriate,
 25 which Meta will address in its forthcoming opposition to the Motion for Leave. If the
 26 amendment is permitted over Meta’s objection, Meta anticipates needing discovery to understand
 27 the factual bases and evidence allegedly supporting Plaintiffs’ new contributory infringement
 28 allegations, including discovery about the alleged direct infringer(s) in Plaintiffs’ new

1 contributory infringement theory and Meta's alleged material contributions to the direct
 2 infringer(s)' alleged infringement, which have not been provided. Discovery from the new
 3 proposed plaintiff loan-out companies will also be needed, as none of those entities have engaged
 4 in any party discovery in this case, including party document requests, interrogatories, and
 5 depositions.

6 **3. Class Discovery**

7 The Parties anticipate that after the summary judgment phase concludes there will be
 8 class-related discovery to provide an adequate record for the consideration of class certification.

9 **I. Class Actions**

10 As required by Civil Local Rule 16-9(b), all attorneys of record certify that they have
 11 reviewed the Procedural Guidance for Class Action Settlements.

12 **Plaintiffs' Statement:** Consistent with Local Rule 16-9 and the Standing Order for All
 13 Judges of the Northern District of California (pursuant to which a plaintiff addresses class
 14 certification in a CMC statement), and given that Plaintiffs bear the burden of establishing that
 15 the elements of Rule 23 are satisfied, Plaintiffs provide the following additional information
 16 regarding the Class Action allegations:

17 Plaintiffs assert that class certification is appropriate because Plaintiffs can prove the
 18 elements of their claims, including damages, on a class-wide basis using the same evidence as
 19 would be used to prove these elements in individual actions alleging the same claim.

20 Plaintiffs intend to request that the Court certify a class under Fed. R. Civ. P. 23(b)(3), Fed.
 21 R. Civ. P. 23(b)(2), and/or Fed. R. Civ. P. 23(c)(4).

22 Based on the current posture of the and without waiving any appellate rights, Plaintiffs
 23 intend to request that the Court certify the following class:

24 All legal or beneficial owners of any book, article, journal, or other
 25 written work Meta uploaded, offered or otherwise made accessible
 26 to others, and/or downloaded via BitTorrent; or otherwise
 27 reproduced in connection with its LLM(s), between July 7, 2020 and
 28 the present (the "Class Period"); and that was registered with the
 United States Copyright Office (i) within five years of the work's
 first publication and (ii) before being uploaded, offered, or made
 accessible to third parties, and/or downloaded or otherwise copied by
 Meta, or within three months of first publication.

1 Consistent with Rule 23(c)(1)(B)-(C), Plaintiffs may further modify this definition of the putative
 2 class to conform to proof during the class discovery phase.

3 Plaintiffs thereby seek to represent a class of owners of registered copyrights in written
 4 works whose works were used by Meta. Plaintiffs allege that Meta committed direct and/or
 5 contributory copyright infringement when it uploaded a large trove of copyrighted written works
 6 and used those works for non-training purposes. Meta's conduct with respect to the class was
 7 uniform. That is, Meta made a single decision (implemented over a discrete period of time) to
 8 torrent a large volume of copyrighted written works, without seeking authors' consent, and
 9 reproduced, made available, and distributed those works. Plaintiffs' and class members' claims will
 10 therefore rise or fall on common questions of law—only federal law is at issue—and fact. The
 11 central issues include (a) whether Meta reproduced, made available, and/or distributed class
 12 members' written works in the course of torrenting or using the works for non-training purposes;
 13 (b) whether Meta's infringement of the copyrights in class works was willful.

14 ***Meta's Statement:*** Plaintiffs have added a lengthy and argumentative discussion regarding
 15 class certification that extends far beyond the discussions in prior case management
 16 statements. *See, e.g.*, Dkt. 605 at 12. None of this argument is appropriate or pertinent to the
 17 current stage of the case, where the Court is currently adjudicating the named plaintiffs' claims on
 18 the merits before addressing any issues of class discovery or class certification. Meta reserves all
 19 rights and arguments with respect to plaintiffs' proposed class definition and will oppose class
 20 certification at the appropriate time.

21 **J. Related Cases**

22 The following cases are related to and have been consolidated in this proceeding:

23

- 24 • *Chabon et al. v. Meta Platforms, Inc.*, No. 3:23-cv-04663-VC
- 25 • *Huckabee et al. v. Meta Platforms, Inc. et al.*, No. 3:23-cv-06663-VC
- 26 • *Farnsworth et al. v. Meta Platforms, Inc.*, No. 3:24-cv-06893-VC

27 On November 25, 2025, the Court found that a fourth, recently filed action is related, *Entrepreneur*
 28 *Media, LLC v. Meta Platforms, Inc.*, Case No. 25-cv-09579-VC (“*Entrepreneur*”).

1 The plaintiff in *Entrepreneur* appears to be a class member in this Action. Because
 2 resolution of opt-out plaintiffs' claims typically occurs after resolution of class claims, the parties
 3 believe that *Entrepreneur* should be fully or partially stayed and/or that any summary judgment
 4 motion practice or trial in *Entrepreneur* should occur after the dispositive motions and trial in this
 5 Action.

6 **K. Relief**

7 Plaintiffs seek judgment against the Meta and in favor of the proposed class, as well as the
 8 following relief: (a) the certification of the proposed class, the appointment of Plaintiffs' counsel
 9 as class counsel, the designation of class representatives, and a notice program under Rule 23; (b)
 10 the award of damages in favor of Plaintiffs and the class against Defendant for all damages
 11 sustained as a result of Defendants' violations of the Copyright Act, including statutory damages
 12 or (at Plaintiffs' election) actual damages, restitution, and/or disgorgement of profits
 13 (restitutionary and non-restitutionary), and prejudgment and/or postjudgment interest thereon as
 14 permitted by law; (c) a declaration that Meta infringed Plaintiffs and proposed class members'
 15 exclusive copyrights, and that such infringement was willful; (d) an order permanently enjoining
 16 Meta from engaging in its alleged infringing conduct; and (e) an order awarding Plaintiffs and the
 17 proposed class costs, expenses, and attorneys' fees, as permitted by law.

18 Meta denies that certification of any class is appropriate or that Plaintiffs are entitled to any
 19 relief in this action. Meta reserves the right to seek recovery of its costs and attorneys' fees as
 20 permitted by law.

21 **L. Settlement and ADR**

22 On November 15, 2023, the Parties complied with ADR L-R 3.5 by filing their respective
 23 ADR Certifications by Parties and Counsel. Dkt. 48-51.

24 The Parties briefly discussed settlement and ADR options during their meet and confer on
 25 December 10, 2025.

26 **M. Other References**

27 This case is not suitable for reference to binding arbitration, a special master, or the
 28 Judicial Panel on Multidistrict Litigation.

1 **N. Narrowing of Issues**

2 The Parties do not believe narrowing of the issues in dispute is practical or feasible at this
3 time.

4 **O. Scheduling**

5 Pursuant to the Stipulation and Order Regarding the Case Management Schedule (Dkt.
6 641), the following schedule currently applies:

Event	Deadline (Dkt. 641)
Plaintiffs' Expert Report	Friday, December 19, 2025
Meta Rebuttal to Plaintiffs' Expert Report	Thursday, January 22, 2026
Deadline to Complete Expert Depositions	Friday, February 6, 2026
Summary Judgment Brief 1	Thursday, February 12, 2026
Summary Judgment Brief 2	Thursday, March 12, 2026
Summary Judgment Brief 3	Thursday, April 2, 2026
Summary Judgment Brief 4	Thursday, April 16, 2026
Summary Judgment Hearing	Thursday, April 30, 2026
Class Discovery and Deadline for Plaintiffs' motion for class certification	TBD
Final Pretrial Conference	TBD
Trial	TBD

22 Meta has proposed, and Plaintiffs have agreed, to extend this schedule to complete pending
23 discovery:

Event	Current Scheduling Order (Dkt. 641)	Proposed Deadline
Opening Expert Reports	Friday, December 19, 2025	Friday, February 27, 2026
Rebuttal Expert Reports	Thursday, January 22, 2026	Friday, April 3, 2026
Deadline to Complete Expert Depositions	Friday, February 6, 2026	Thursday, April 23, 2026

1	Summary Judgment Brief 1	Thursday, February 12, 2026	Thursday, April 30, 2026
2	Summary Judgment Brief 2	Thursday, March 12, 2026	Thursday, May 28, 2026
3	Summary Judgment Brief 3	Thursday, April 2, 2026	Thursday, June 18, 2026
4	Summary Judgment Brief 4	Thursday, April 16, 2026	Thursday, July 2, 2026
5	Summary Judgment Hearing	Thursday, April 30, 2026	Thursday, July 16, 2026

6
7 The parties have filed a stipulation reflecting that agreement before the CMC. (Dkt. 660.)

8 **P. Trial**

9 Plaintiffs have requested a trial by jury on all claims allowed. The parties believe it is
10 premature to determine the length of trial until the scope of issues to be tried is finalized.

11 ***Plaintiffs' Statement:*** At this stage, however, Plaintiffs anticipate trial would require
12 between eight and ten court days.

13 **Q. Disclosure of Non-Party Interested Entities or Persons**

14 The Parties filed their Certificates of Interested Entities or Persons under Civil Local Rule
15 3-15.

16 **R. Professional Conduct**

17 All attorneys of record for the Parties have reviewed the Guidelines for Professional
18 Conduct for the Northern District of California.

19 **S. Other**

20 The Parties are not aware of other matters that may facilitate the resolution of this matter.

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1 Dated: December 12, 2025

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ECF ATTESTATION

Pursuant to Local Rule 5-1(i)(3), I hereby attest that counsel for Defendant concurs in the filing of this document

/s/ Daniel M. Hutchinson