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12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 RICHARD KADREY, SARAH SILVERMAN,
17 CHRISTOPHER GOLDEN, MICHAEL
CHABON, TA-NEHISI COATES, JUNOT
18 DÍAZ, ANDREW SEAN GREER, DAVID
HENRY HWANG, MATTHEW KLAM,
19 LAURA LIPPMAN, RACHEL LOUISE
SNYDER, AYELET WALDMAN, AND
20 JACQUELINE WOODSON,

21 Individual and Representative Plaintiffs,

22 v.

23 META PLATFORMS, INC., a Delaware
corporation;

24 Defendant.

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

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

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

7 I. OVERVIEW¹

8 1. Meta admits that it has created two large language models (“LLMs”) referred to as
9 Llama 1 and Llama 2. 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. Meta lacks knowledge and information sufficient to form a belief as to the truth of
20 the allegations set forth in paragraph 12, and on that basis denies the same.

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

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

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

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

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. Meta lacks knowledge and information sufficient to form a belief as to the truth of
8 the allegations set forth in paragraph 55, and on that basis denies the same.²

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

11 57. Meta lacks knowledge and information sufficient to form a belief as to the truth of
12 the allegations set forth in paragraph 57, and on that basis denies the same.

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

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

17 60. Meta lacks knowledge and information sufficient to form a belief as to the truth of
18 the allegations set forth in paragraph 60, and on that basis denies the same.

19 61. Meta lacks knowledge and information sufficient to form a belief as to the truth of
20 the allegations set forth in paragraph 61, and on that basis denies the same.

21 62. Meta lacks knowledge and information sufficient to form a belief as to the truth of
22 the allegations set forth in paragraph 62, and on that basis denies the same.

23 63. Meta admits that portions of Books3 were used as training data for Llama 1 prior
24 to its release in February 2023. Meta lacks knowledge and information sufficient to form a belief
25

26
27 ² Paragraphs 55, 57, 60-62 of the FCAC are truncated and refer to an alleged discussion that is no
28 longer accessible online. Meta has alleged that the FCAC appears to reveal an unauthorized
disclosure of attorney-client privileged communications. Nothing herein shall be deemed to waive
Meta's rights, all of which are reserved.

1 as to the truth of the remaining allegations set forth in paragraph 63, and on that basis denies the
2 same.

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

5 65. Meta admits the allegations in paragraph 65.

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

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

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

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

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

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

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

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

4 **F. Other Class Considerations**

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

8 91. The allegations in paragraph 91 state legal conclusions or arguments to which no
9 response is required. To the extent a response is deemed required, Meta denies the allegations in
10 paragraph 91.

11 **VII. DEMAND FOR JUDGMENT**

12 92. Meta denies that this action may be maintained as a Class Action under Rule 23 of
13 the Federal Rules of Civil Procedure as alleged in the FCAC. Meta denies that Plaintiffs and the
14 proposed Class are entitled to relief whatsoever, including but not limited to the relief sought in the
15 section of the FCAC titled “Demand for Judgment.” To the extent that this section contains any
16 allegations, Meta denies the same.

17 **AFFIRMATIVE DEFENSES**

18 Meta asserts that Plaintiffs’ claims are barred, in whole or in part, by the defenses set forth
19 herein. By setting forth these defenses, Meta does not assume the burden of proving any fact, issue,
20 or element of a cause of action where such burden properly belongs to Plaintiffs. Meta reserves
21 the right to plead any and all defenses that may be evident or revealed after investigation and
22 discovery in this matter.

23 **FIRST AFFIRMATIVE DEFENSE**

24 To the extent that Meta made any unauthorized copies of any Plaintiffs’ registered
25 copyrighted works, such copies constitute fair use under 17 U.S.C. § 107.

26 **SECOND AFFIRMATIVE DEFENSE**

27 Plaintiffs allege infringement with respect to tens of thousands of literary works that were
28 allegedly included as part of the Books3 training dataset. To the extent the accused Books3 dataset

1 includes works in the public domain, unregistered works, works to which copyright protection has
2 been abandoned, works that lack requisite originality, works that are not subject to copyright
3 protection under the doctrines of merger, *scènes à faire* or under 17 U.S.C. § 102(b) or otherwise
4 unprotectable under the law, or works that are subject to misuse, unclean hands, laches, estoppel or
5 other equitable defenses, or works that were not properly registered or renewed, provided improper
6 notice, and/or did not comply with registration requirements and/or with other necessary
7 formalities, Meta reserves its right to defend against Plaintiffs' claims on any or all of these
8 grounds.

9 **THIRD AFFIRMATIVE DEFENSE**

10 Plaintiffs' claims are barred or limited to the extent that the works over which they assert
11 copyright and copyright infringement were subject of a license or permission given to Defendant
12 or its agents.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 Some or all of Plaintiffs' claims are barred to the extent certain of the Plaintiffs do not own
15 the copyright and/or electronic rights for some of all of the works, and/or otherwise lack standing
16 to assert the claims herein.

17 **FIFTH AFFIRMATIVE DEFENSE**

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

20 Dated: January 10, 2024

COOLEY LLP

21
22
23 By: 

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Mark Weinstein
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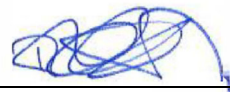
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DEMAND FOR TRIAL BY JURY

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

Dated: January 10, 2024

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By: 

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