

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AUTHORS GUILD, DAVID BALDACCI,
MARY BLY, MICHAEL CONNELLY,
SYLVIA DAY, JONATHAN FRANZEN,
JOHN GRISHAM, ELIN HILDERBRAND,
CHRISTINA BAKER KLINE, MAYA
SHANBHAG LANG, VICTOR LAVALLE,
GEORGE R.R. MARTIN, JODI PICOULT,
DOUGLAS PRESTON, ROXANA
ROBINSON, GEORGE SAUNDERS, SCOTT
TUROW, and RACHEL VAIL, individually and
on behalf of others similarly situated,

Plaintiffs,

v.

OPENAI INC., OPENAI OPCO LLC, OPENAI
GP LLC, OPENAI LLC, OPENAI GLOBAL
LLC, OAI CORPORATION LLC, OPENAI
HOLDINGS LLC, OPENAI STARTUP FUND
I LP, OPENAI STARTUP FUND GP I
LLC, OPENAI STARTUP FUND
MANAGEMENT LLC, and MICROSOFT
CORPORATION,

Defendants.

JONATHAN ALTER, KAI BIRD, TAYLOR
BRANCH, RICH COHEN, EUGENE LINDEN,
DANIEL OKRENT, JULIAN SANCTON,
HAMPTON SIDES, STACY SCHIFF, JAMES
SHAPIRO, JIA TOLENTINO, and SIMON
WINCHESTER, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

OPENAI, INC., OPENAI GP, LLC, OPENAI,
LLC, OPENAI OPCO LLC, OPENAI GLOBAL
LLC, OAI CORPORATION, LLC, OPENAI
HOLDINGS, LLC, and MICROSOFT
CORPORATION,

Defendants.

Case No. 1:23-cv-08292-SHS;
Case No. 1:23-cv-10211-SHS;
Case No. 1:24-cv-00084-SHS.

**STIPULATION AND ORDER
STRIKING CLASS
ALLEGATIONS IN THE
BASBANES COMPLAINT AND
SETTING FORTH A CASE
SCHEDULE**

NICHOLAS A. BASBANES and NICHOLAS
NGAGOYEANES (professionally known as
Nicholas Gage), individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

MICROSOFT CORPORATION, OPENAI,
INC., OPENAI GP, L.L.C., OPENAI
HOLDINGS, LLC, OAI CORPORATION,
LLC, OPENAI GLOBAL, LLC, OPENAI,
L.L.C., and OPENAI OPKO, LLC,

Defendants.

STIPULATION AND ORDER REGARDING BASBANES LITIGATION

This stipulation is made by and among Interim Co-Lead Class Counsel for the Author Classes on behalf of the Author Plaintiffs¹; Counsel for Nicholas A. Basbanes and Nicholas Ngagoyeanes (professionally known as Nicholas Gage) (collectively, “*Basbanes Plaintiffs*”, and together with Author Plaintiffs, “*Plaintiffs*”); and Counsel for OpenAI, Inc., OpenAI OPCO LLC, OpenAI GP LLC, OpenAI LLC, OpenAI Global LLC, OAI Corporation LLC, OpenAI Holdings LLC, OpenAI Startup Fund I LP, OpenAI Startup Fund GP I LLC, OpenAI Startup Fund Management LLC (collectively “*OpenAI*”) and Microsoft Corporation (collectively “*Defendants*” and, together with the Plaintiffs, the “*Parties*”).

WHEREAS, on September 19, 2023 and November 21, 2023 the Author Plaintiffs filed their respective initial fiction and non-fiction Class Action Complaints; and the Author Plaintiffs then together filed their First Consolidated Class Action Complaint on February 5, 2024 against Defendants (Dkt. No. 69²);

WHEREAS, on January 5, 2024, the *Basbanes Plaintiffs* filed a Class Action Complaint, No. 1:24-cv-00084-SHS, against Defendants (*Basbanes Dkt. No. 1*);

WHEREAS, on February 6, 2024, this Court appointed the law firms Lieff, Cabraser, Heimann & Bernstein LLP, Susman Godfrey LLP, and Cowan DeBaets Abrahams & Sheppard

¹ Author Plaintiffs are Jonathan Alter, Authors Guild, David Baldacci, Mary Bly, Kai Bird, Taylor Branch, Rich Cohen, Michael Connelly, Sylvia Day, Jonathan Franzen, John Grisham, Elin Hilderbrand, Christina Baker Kline, Maya Shanbhag Lang (pending her dismissal), Victor Lavalley, Eugene Linden, George R.R. Martin, Daniel Okrent, Jodi Picoult, Douglas Preston, Roxana Robinson, Julian Sancton, George Saunders, Hampton Sides, Stacy Schiff, James Shapiro, Jia Tolentino, Scott Turow, Rachel Vail, and Simon Winchester.

² References to “Dkt.” refer to the *Authors Guild et al. v. OpenAI et al.* matter, No. 1:23-cv-08292-SHS, unless otherwise indicated to refer to the *Basbanes* matter.

LLP as Interim Co-Lead Class Counsel of the Author Classes, and consolidated for pretrial purposes the *Basbanes* action with the Author action (Dkt. No. 70; *Basbanes* Dkt. No. 32);

WHEREAS, Counsel for *Basbanes* has informed Interim Co-Lead Class Counsel and Counsel for Defendants that he intends to proceed on an individual basis for the claims of Messrs. Basbanes and Gage; and

WHEREAS, on September 13, 2024, the Court directed the parties to “file a joint stipulation, if possible, by **September 27, 2024**, regarding the potential dismissal of certain claims” in the above-referenced matter, stayed this case until September 27, 2024, and, in the same order (Dkt. No. 202), granted an extension of time for fact discovery until December 20, 2024;

NOW, THEREFORE, in the interests of effectuating the Court’s prior rulings, and adding further clarity and efficiency into the schedule, it is here by Stipulated and Ordered as follows:

1. The Rule 23 allegations in the *Basbanes* Complaint, *Basbanes* Dkt. No. 1, namely, Paragraphs 120-132 and Paragraphs 149 (a)-(c), are hereby **DISMISSED**;
2. Within two weeks of a ruling on class certification in the consolidated class action litigation brought by the Author Plaintiffs, counsel for the *Basbanes* Plaintiffs and counsel for Defendants will confer regarding future proceedings, if any, for the *Basbanes* litigation and submit a joint statement to the Court within one week of the aforementioned conferral; and
3. The *Basbanes* case is **STAYED** pending issuance of a Court order following the joint submission referenced in Paragraph 2 above.

Dated: September 26, 2024 SO STIPULATED AND AGREED,

/s/ Rachel Geman

Rachel Geman
Anna Freymann
Wesley J. Dozier (*pro hac vice*)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Telephone: 212.355.9500
rgeman@lchb.com
afreymann@lchb.com
wdozier@lchb.com

Reilly T. Stoler (*pro hac vice*)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415.956.1000
rstoler@lchb.com

/s/ Rohit Nath

Justin A. Nelson (*pro hac vice*)
Alejandra C. Salinas (*pro hac vice*)
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, TX 77002
Telephone: 713-651-9366
jnelson@susmangodfrey.com
asalinas@susmangodfrey.com

Rohit D. Nath (*pro hac vice*)
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, California 90067
Telephone: 310-789-3100
rnath@susmangodfrey.com

Charlotte Lepic
J. Craig Smyser
SUSMAN GODFREY L.L.P.
1901 Avenue of the Americas, 32nd Floor
New York, New York 10019
Telephone: 212-336-8330
clepic@susmangodfrey.com
csmyser@susmangodfrey.com

/s/ Scott Sholder

Scott J. Sholder
CeCe M. Cole
COWAN DEBAETS ABRAHAMS & SHEPPARD LLP
41 Madison Avenue, 38th Floor

New York, New York 10010
Telephone: 212-974-7474
ssholder@cdas.com
ccole@cdas.com

Interim Co-Lead Class Counsel

/s/ Michael P. Richter
Michael P. Richter
Bryan M. Goldstein
107 Greenwich Street, 25th Floor
New York, New York 10006
Tel.: (212) 682-1800
mrichter@ghsklaw.com
bgoldstein@ghsklaw.com

Attorneys for Basbanes Plaintiffs

/s/ Paven Malhotra
KEKER, VAN NEST & PETERS LLP
Paven Malhotra
pmalhotra@keker.com
633 Battery Street
San Francisco, CA 94111
Telephone: 415-676-2238

LATHAM & WATKINS LLP
Andrew M. Gass (pro hac vice)
andrew.gass@lw.com
Joseph R. Wetzel
joseph.wetzel@lw.com
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: 415-391-0600

Sarang V. Damle
sy.damle@lw.com
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004
Telephone: 202-637-2200

Allison L. Stillman
alli.stillman@lw.com
1271 Avenue of the Americas
New York, NY 10020
Telephone: 212-751-4864

MORRISON & FOERSTER LLP
Joseph C. Gratz (pro hac vice)
jgratz@mofocom
Vera Ranieri (pro hac vice forthcoming)
vranieri@mofocom
425 Market Street
San Francisco, CA 94105
Telephone: 415-258-7522

Rose Lee (pro hac vice)
roselee@mofocom
707 Wilshire Boulevard, Suite 6000
Los Angeles, CA 90017-3543
Telephone: 213-892-5454

Attorneys for OpenAI Defendants

/s/ Jeffrey S. Jacobson
FAEGRE DRINKER BIDDLE & REATH LLP

Jeffrey S. Jacobson
FAEGRE DRINKER BIDDLE & REATH LLP
1177 Avenue of the Americas, 41st Floor
New York, NY 10036
Telephone: 212-248-3191

Annette Louise Hurst
ORRICK, HERRINGTON & SUTCLIFFE LLP
(SAN FRANCISCO)
The Orrick Building
405 Howard Street
San Francisco, CA 94105
Telephone: (415) 773-4585

Christopher Cariello
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
Telephone: 212-506-3778

Jared Barrett Briant
FAEGRE DRINKER BIDDLE & REATH LLP
1144 Fifteenth Street
Suite 3400
Denver, CO 80202
Telephone: 303-607-3588

Marc Shapiro
ORRICK, HERRINGTON, & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
Telephone: 212-506-3521

Sheryl Koval Garko
ORRICK, HERRINGTON & SUTCLIFFE LLP
222 Berkley Street
Boston, MA 02116
Telephone: 617-880-1800

Laura Brooks Najemy
ORRICK, HERRINGTON & SUTCLIFFE LLP
222 Berkley Street
Boston, MA 02116
Telephone: 617-880-1800

Attorneys for Microsoft Corporation

SO ORDERED:

Date: 9/30/2024



Judge Ona T. Wang