

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.

Case No. 1:23-cv-08292-SHS;

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-10211-SHS

**JOINT STIPULATION AND PROPOSED ORDER REGARDING MOTIONS FOR
SUMMARY JUDGMENT, CLASS CERTIFICATION, AND DISCOVERY SCHEDULE**

This stipulation is made by and among 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 (collectively “Fiction Plaintiffs”); 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 (collectively “Nonfiction Plaintiffs” and, together with Fiction Plaintiffs, “Plaintiffs”); and OpenAI, Inc., OpenAI OPCO LLC, OpenAI GP LLC, OpenAI LLC, OpenAI Global LLC, OAI Corporation LLC, OpenAI Holdings LLC, OpenAI Startup Fund I LIP, 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”), by and through their counsel, as follows:

WHEREAS, on September 19, 2023, the Fiction Plaintiffs filed a Class Action Complaint, No. 1:23-cv-08292-SHS, ECF No. 1, against OpenAI;

WHEREAS, on November 21, 2023, Plaintiff Julian Sancton filed a Class Action Complaint, No. 1:23-cv-10211-SHS, ECF No. 1, against OpenAI and Microsoft Corporation;

WHEREAS, on November 30, 2023, this Court entered an order, No. 1:23-cv-08292-SHS, ECF No. 36, stating discovery in this matter commenced on November 6, 2023; ordering the Fiction Plaintiffs to file an amended complaint on or before December 4, 2023; setting the last day for Defendants to answer or move in response to the amended complaint in *Authors Guild et al. v. OpenAI, Inc. et al.* (No. 1:23-cv-08292-SHS) on January 12, 2024; setting the last day for Defendants to respond to the complaint in *Sancton v. OpenAI, Inc. et al.* (No. 1:23-cv-10211-SHS) on January 12, 2024; setting the last day for the Fiction Plaintiffs and Defendants to file their positions on whether summary judgment or class certification should proceed first on January 12, 2024; setting the last day for the Fiction Plaintiffs to respond to any motion in response to the amended complaint on January 26, 2024; and setting the reply to any motion in *Authors Guild et*

al. v. OpenAI, Inc. et al. (No. 1:23-cv-08292-SHS) due on or before February 2, 2024;

WHEREAS, on December 4, 2023, the Fiction Plaintiffs filed an Amended Class Action Complaint, No. 1:23-cv-08292-SHS, ECF No. 40, adding Microsoft Corporation as a defendant;

WHEREAS, on December 19, 2023, Nonfiction Plaintiffs filed an Amended Class Action Complaint, No. 1:23-cv-10211-SHS, ECF. No. 26, adding Jonathan Alter, Kai Bird, Taylor Branch, Rich Cohen, Eugene Linden, Daniel Okrent, Hampton Sides, Stacy Schiff, James Shapiro, Jia Tolentino, and Simon Winchester as plaintiffs;

WHEREAS, on January 12, 2024, Plaintiffs' counsel filed a Motion for the Appointment of Interim Class Counsel for the Fiction and Nonfiction Author Classes;

NOW, THEREFORE, in consideration of the foregoing, which are incorporated into this Stipulation, the Parties hereby stipulate and agree as follows:

1. Defendants consent and stipulate not to seek transfer of the above-captioned cases to another district; however, in the event additional cases are filed raising similar claims on behalf of individual plaintiffs or proposed classes that overlap, either partially or completely, with the classes proposed in the operative Complaints (No. 1:23-cv-08292-SHS, ECF No. 40; No. 1:23-cv-10211-SHS, ECF. No. 26), Defendants reserve the right to file a motion under 28 U.S.C. § 1407 seeking coordination or consolidation before any appropriate district court.

2. Defendants consent and stipulate not to bring a motion to dismiss under the first-to-file rule.

3. Defendants consent and stipulate not to seek to dismiss, under Federal Rule of Civil Procedure 12(b), Plaintiffs' currently-pleaded claims.

4. The Parties consent and stipulate to the consolidation of the *Authors Guild et al. v. OpenAI, Inc. et al.*, No. 1:23-cv-08292-SHS, and *Alter v. OpenAI, Inc. et al.*, No. 1:23-cv-10211-SHS pursuant to Federal Rule of Civil Procedure 42 for pre-trial purposes.

5. The Parties consent and stipulate that Plaintiffs will file a consolidated class action complaint no later than January 26, 2024, and Defendants will respond to Plaintiffs' consolidated class action complaint no later than February 9, 2024. Defendants shall not move to dismiss under Federal Rule of Civil Procedure 12(b) any claims pleaded in the consolidated class action complaint that are currently pleaded in the operative Nonfiction and Fiction complaints.

6. The Parties consent and stipulate that discovery is ongoing and that there are no present restrictions on the scope of class discovery, notwithstanding that summary judgment will be briefed before Plaintiffs' motion for class certification.

7. The Parties stipulate and agree, and upon entry of this stipulation by the Court, it is hereby ordered, that fact discovery, expert discovery, and the briefing of any motion for summary judgment will be completed on or before February 28, 2025.

8. The Parties will, by January 26, 2024 submit proposed schedule(s) for fact discovery, expert discovery, and the briefing of summary judgment. Prior to submitting any proposed schedules, the parties will meet and confer in good faith in an effort to reach agreement on any proposed schedules and minimize or eliminate disputes presented to the Court.

9. Defendants stipulate and agree and hereby expressly waive whatever protections to which they would otherwise be entitled under the "one-way intervention" rule with respect to its forthcoming summary judgment motions. *See, e.g., Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538, 547 (1974). Defendants expressly reserve the right to raise any and all defenses, other than any protection to which they would otherwise be entitled under the one-way intervention rule.

10. The Plaintiffs reserve their rights to move for class certification at any point, and the Parties stipulate and agree that Defendants are not required to submit oppositions before the Court's ruling on summary judgment. In the event that the Court denies or partially denies Defendants' motion for summary judgment, Defendants' opposition to any pending motion for

class certification will be due thirty-five (35) days after the Court's order on any motion(s) for summary judgment. Plaintiffs' reply in support of any pending motion for class certification will be due twenty-one (21) days after Defendants' opposition.

11. The Parties expressly reserve all rights, arguments, claims, and defenses not addressed herein.

IN WITNESS WHEREOF and in agreement herewith, by and through their counsel, the Parties have executed and delivered this Stipulation as of the date first set forth below.

SO STIPULATED AND AGREED.

Date: January 19, 2024

/s/ Rachel J. Geman

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Date:

January 27, 2024

SO ORDERED:

Sidney H. Stein
Sidney H. Stein, U.S.D.J.