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May 1, 2024

**VIA ECF**

Hon. Sidney H. Stein  
United States District Judge  
Southern District of New York  
500 Pearl Street, Courtroom 23A  
New York, New York 10007

Re: *The New York Times Company v. Microsoft Corporation, et al.*,  
Case No.: 23-cv-11195-SHS

Dear Judge Stein:

I write on behalf of Plaintiff, The New York Times Company (hereafter, “The Times”), to respectfully move for entrance of the enclosed proposed Protective Order and Electronically Stored Information (“ESI”) Order attached hereto as Exhibits A and B.

On February 23, 2024, The Times sent Defendants Microsoft Corporation and OpenAI (collectively, “Defendants”) a proposed protective order and ESI order. In lieu of redlining The Times’s proposals, on March 14, Defendants responded with entirely new proposed protective and ESI orders. On April 5, The Times sent edits to Defendants’ new proposals and offered to schedule a call to discuss. Since that time, The Times has twice asked Defendants in writing for a response, but despite these requests, Defendants have not substantively responded. Initially, on April 5, The Times told Defendants it wanted to submit the proposed Protective and ESI Orders or raise any disputes with the Court the week of April 8. Defendants did not respond. Most recently, on April 25, The Times again asked Defendants to engage via an email stating that The Times would submit its most recent proposals to the Court if Defendants did not respond by April 30. Because Defendants did not respond by April 30—some 67 days after The Times first circulated draft

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orders—The Times brings this letter motion asking the Court to enter the attached proposed Protective and ESI Orders.

The Times made every effort to negotiate these Orders with Defendants. But there is no excuse for the delay Defendants have inserted into this process. And there can be no doubt that this delay is inhibiting the efficient determination of this action. *See* Fed. R. Civ. Proc. 1. Indeed, although Defendant Microsoft has not responded to The Times’s proposed Protective Order and ESI Order for nearly a month, two days ago Microsoft stated during a meet-and-confer that it will not produce documents until the Court enters a Protective Order. Meanwhile, Defendant OpenAI has delayed even setting a date for a meet-and-confer about its discovery responses or the proposed Protective Order and ESI Order. Nor does Defendants’ foot-dragging appear to be unique to this case, as it appears that neither a protective order nor an ESI order has been entered in the *Authors Guild et al. v. OpenAI, Inc. et al.* (No. 1:23-cv-08292), *Alter et al. v. OpenAI, Inc. et al.* (No. 1:23-cv-10211), and *Basbanes et al. v. OpenAI, Inc. et al.* (No. 1:23-cv-00084) actions either. *See also* Pls.’ Letter Motion, ECF No. 138, *Authors Guild et al. v. OpenAI Inc. et al.* (No. 1:23-cv-08292).

Given this backdrop, The Times respectfully requests that the Court enter the enclosed proposed Protective Order and ESI Order. Both documents reflect The Times’s reasonable edits to Defendants’ proposed drafts, notwithstanding Defendants’ wholesale refusal to engage with The Times’s proposed draft Orders. To the extent Defendants oppose these versions and the Court is inclined to consider that opposition, The Times respectfully requests the opportunity to respond to Defendants’ arguments.

Respectfully submitted,

/s/ Ian B. Crosby  
Ian B. Crosby

Enclosures: Ex. A - Proposed Protective Order; Ex. B - Proposed ESI Order

cc: All Counsel of Record (via ECF)