UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE INTERCEPT MEDIA, INC.,                                :
                                                          :   Case No. 1:24-cv-01515-JSR-JLC
            Plaintiff,                                    :
                                                          :
            v.                                            :
                                                          :
OPENAI, INC., OPENAI GP, LLC,                             :
OPENAI, LLC, OPENAI OPCO LLC,                             :
OPENAI GLOBAL LLC, OAI                                    :
CORPORATION, LLC, OPENAI                                  :
HOLDINGS, LLC, and MICROSOFT                              :
CORPORATION,                                              :
                                                          :
            Defendants.                                   :
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OPENAI DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF MOTION TO DISMISS

Defendants OpenAI, Inc., OpenAI GP, L.L.C., OpenAI, L.L.C., OpenAI OpCo, L.L.C., OpenAI Global, L.L.C., OAI Corporation, L.L.C., and OpenAI Holdings, L.L.C. (collectively, "OpenAI"), by and through counsel, respectfully submit this Notice of Supplemental Authority to apprise the Court of a recent order that further supports OpenAI's pending Motion to Dismiss (Dkt. 52).

In *Andersen, et al. v. Stability AI Ltd., et al.*, No. 23-cv-00201 (N.D. Cal.), the plaintiffs alleged that several defendants "directly copied [plaintiffs' works] and used [them] as training data" for artificial intelligence models, and that the "training process [for those models] is designed to remove or alter CMI from the training images" in violation of Section 1202(b)(1) of the Digital Millenium Copyright Act ("DMCA"). *See* First Amended Complaint, *Andersen*, No. 23-cv-00201, Dkt. 129 ¶¶ 245, 300, 367 (attached hereto as Exhibit 1). On August 12, 2024, the United States District Court for the Northern District of California dismissed each of the Section 1202(b)

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claims with prejudice. *See* Order Granting in Part and Denying in Part Motions to Dismiss First Amended Complaint, *Andersen*, No. 23-cv-00201, Dkt. 223 at 11–13 & n.13 (attached hereto as Exhibit 2). In so doing, the Court endorsed the defendants' argument that "there can be no liability for any removal of CMI that occurred during the training process" when "the output images are [] not *identical* to the Training Images," holding that the Section 1202(b) claims failed "[b]ecause there are no allegations that any output from [the models] was identical to a plaintiff's work." *Id.*

Dated: August 22, 2024

Respectfully Submitted,

By: /s/ *Elana Nightingale Dawson*

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[*] All parties whose electronic signatures are included herein have consented to the filing of this document in accordance with Rule 8.5(b) of the Court's ECF Rules and Instructions.

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