UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: OPENAI, INC., COPYRIGHT INFRINGEMENT LITIGATION This Document Relates To: No. 1:23-CV-08292 No. 1:23-CV-10211 No. 1:23-CV-11195 No. 1:24-CV-03285 No. 1:24-CV-04872 No. 1:24-CV-01515 No. 1:25-CV-04315	Civil Action No. 1:25-md-03143 **PLAINTIFFS' NOTICE OF MOTION FOR JOINT DAUBERT MOTION AND MOTION TO STRIKE**

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law, accompanying declaration, and all exhibits attached thereto, the undersigned hereby move this Court on behalf of Plaintiffs, before the Honorable Sydney H. Stein in Courtroom 23A of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, New York, 10007, on a date and at a time to be set by the Court, for an order granting Plaintiffs' Joint Daubert Motion and Motion to Strike.

Plaintiffs seek an order excluding[1]:

1. Any testimony relying on the 20 Million ChatGPT conversations

    a. *See* Dr. Feamster [Ex. 3 (Feamster Opening Rpt.) ¶¶ 182-234, 237, 238, 248, 249, 253, 255, 256, 257, 316-319, 324-343, Appendix D, Appendix E]; Dr. Berg-Kirkpatrick [Ex. 1 (Berg-Kirkpatrick Opening Rpt.) ¶¶ 13-16, 22-26, Section VI(A) (¶¶ 89-113), Section VII (¶¶ 146-179), Section VIII (¶¶ 180-

[1] Plaintiffs seek an order excluding the testimony and opinions described below. The citations provided are representative but not exhaustive.

245), ¶¶ 270-271, 368-369, 376, 381-420, Appendix C; *id.* Figure A.15; Ex. 4 (Berg-Kirkpatrick Rebuttal Rpt.) ¶¶ 2, 17, 22, 23, 41-43, 175, 228, 230, 255-277, 330, 332, Table A.8; Ex. 5 (Berg-Kirkpatrick Reply Rpt.) ¶¶ 7(a)-(b), 9-11, Section III (¶¶ 14-25, 27-31), Section IV (¶¶ 32-161), Section V (¶¶ 162-298), Appendix A, Appendix B]; Dr. Callison Burch [Ex. 6 (Callison-Burch Rebuttal Rpt.) ¶ 91; Ex. 7 (Callison-Burch Reply Rpt.) ¶¶ 55, 89, 97].

2. Dr. Callison-Burch's opinions that OpenAI's use of Plaintiffs' works was transformative

    a. *See* Ex. 8 (Callison-Burch Opening Rpt.) ¶¶ 9-13, 265-269, 308.

3. Dr. Krishnan's opinions on the accuracy of the Library Genesis metadata

    a. *See* Ex. 10 (Krishnan Class Rebuttal Rpt.) ¶¶ 18, 66-67, 113.

4. Dr. Krishnan's opinions on "false positives"

    a. *See* Ex. 15 (NYT/DNP Krishnan Rebuttal Rpt.) ¶¶ 26, 70, 71, 72, 91, 97-125, 149(a); Appendices C and D; Working Papers (coding 100 samples as false positives and third-party estimates); Ex. 52 (Ziff Krishnan Rebuttal Rpt.) ¶¶ 51, 57-58, 102-118, 214; Ex. 16 (CIR/Intercept Krishnan Rebuttal Rpt.) ¶¶ 27, 53(c), 54, 59, 74, 75, 96-118, 120(b), 161, 164, 168-70, 202, and all working papers supporting the conclusions reached in those paragraphs.

5. Dr. Tucker's opinions as reflected in her five reports and two declarations across this MDL

    a. *See* Ex. 17 (Tucker Class Opening Rpt.); Ex. 18 (Tucker Class Reply Rpt.); Ex. 19 (Tucker News Opening Rpt.); Ex. 20 (Tucker News Rebuttal Rpt.); Ex. 21 (Tucker News Reply Rpt.), ECF 1725 (Tucker Declaration in Support of

Microsoft's Motion for Summary Judgment in the Class cases); ECF 1732 (Tucker Declaration in Support of Microsoft's Motion for Summary Judgment in the News cases).

6. Dr. Tucker's opinions relating to trends in book sales, royalties, and website traffic trends

    a. *See* Ex. 17 (Tucker Class Opening Rpt.) ¶¶ 52-74 and accompanying headings and footnotes, and Figures shown or referenced in those paragraphs; Ex. 18 (Tucker Class Reply Rpt.) ¶¶ 14, 24, and accompanying headings and footnotes, and Figures shown or referenced in those paragraphs; Ex. 19 (Tucker Newspaper Opening Rpt.) Section III.C.; ¶¶ 24(b), 47, 59-81, accompanying headings and footnotes, and Figures shown or referenced in those paragraphs; Appendices D.1 through D.9H; Ex. 20 (Tucker Newspaper Rebuttal Rpt.) ¶¶ 4(b), 4(c), 17, 20(c), 22-26, 31-35, accompanying headings and footnotes, and Figures shown or referenced in those paragraphs; Ex. 21 (Tucker Newspaper Reply Rpt.) ¶¶ 6, 8-24, 26, 28-29, 34, 37, accompanying headings and footnotes, and Figures shown or referenced in those paragraphs; ECF 1732 (Tucker Declaration ISO Microsoft's News MSJ) ¶¶ 11, 12(b), 16-18, 20-24, 30-89, 91-93, 94, 105, 111-116, accompanying headings and footnotes, and Figures shown or referenced in those paragraphs; Appendix D.1.

7. Dr. Nonnecke's "common industry practice" opinion

    a. *See* Ex. 25 (Nonnecke Rebuttal Rpt.) ¶ 85.

8. Dr. Feamster's opinions on "transformativeness"

a. *See* Ex. 3 (Feamster Opening Rpt.) ¶¶ 320, 334; Ex. 27 (Feamster Rebuttal Rpt.) ¶ 275.

9. Dr. Feamster's testimony regarding the design and functions of OpenAI's bots and products

a. *See* Ex. 3 (Feamster Opening Rpt.) ¶¶ 178 n.136, 193 n.149, 199 n.160, 199 n.163, 245 n.240, 245 n.242, 246 n.243, 246 n.244, 252 n.259, 254 n.261; Ex. 27 (Feamster Rebuttal Rpt.) ¶¶ 55, 61, 86, 100 n.95, 205; Ex. 28 (Feamster Reply Rpt.) ¶ 89 n.122; Ex. 29 (Feamster Supplemental Rpt.) ¶¶ 7, 9, 10.

10. Dr. Feamster's testimony rebutting Ms. Stricchiola's server log analysis

a. *See* Ex. 27 (Feamster Rebuttal Rpt.) ¶¶ 57-60, 72-74, 83-88, 94-96, 99-104, Table 2 (NYT Server Logs), Table 7 (DNP Server Logs), Table 9 (Ziff Davis Server Logs).

11. Dr. Berg-Kirkpatrick's opinions on the regurgitation rate of News Plaintiffs' works

a. *See* Ex. 1 (Berg-Kirkpatrick Opening Rpt.) ¶¶ 16, 181, 185, 270; Ex. 4 (Berg-Kirkpatrick Rebuttal Rpt.) ¶¶ 50, 175-76; ECF 1750 (Berg-Kirkpatrick Declaration ISO MSJ) ¶¶ 25-28, 33.

12. Dr. Berg-Kirkpatrick's rebuttal to Mr. Delorey's model inspection

a. *See* Ex. 4 (Berg-Kirkpatrick Rebuttal Rpt.) ¶21 (part C), § V.C (titled "Response to Mr. Delorey"), and §XI (titled "Appendix C: Mr. Delorey's 'Regurgitation' Study"); Ex. 23 (Berg-Kirkpatrick Rebuttal Working Paper entitled "Delorey Random Sample Classification.xlsx"); Ex. 36 (Berg-Kirkpatrick Ziff Addendum) ¶¶2-6, ¶7b, ¶¶17-27, Appendix §b., Tables 5-6; ECF 1750 (Berg-Kirkpatrick Declaration ISO OpenAI's MSJ) ¶¶58-67.

13. Dr. Goldfarb's licensing opinions

    a. *See* Ex. 54 (Goldfarb Ziff Opening Rpt.) § VII(C); Ex. 55 (Goldfarb Ziff Rebuttal Rpt.) § IV; Ex. 38 (Goldfarb CIR Opening Rpt.) § VII(C); Ex. 58 (Goldfarb Intercept Opening Rpt.) § VI(C); Ex. 59 (Goldfarb CIR/Intercept Reply Rpt.) § V(A); Ex. 40 (Goldfarb DNP Opening Rpt.) § VII(C); Ex. 43 (Goldfarb NYT Opening Rpt.) § VII(C); Ex. 56 (Goldfarb NYT-DNP Rebuttal Rpt.) § IV; Ex. 57 (Goldfarb NYT-DNP Reply Rpt.) § VI(B).

14. Dr. Goldfarb's analysis of ChatGPT traffic and engagement trends

    a. *See* Ex. 54 (Goldfarb Ziff Opening Rpt.) § VI(D), Figs. 14-22 & App. D; Ex. 40 (Goldfarb DNP Opening Rpt.) ¶¶ 191-223, Figs. 16-20, App. D; Ex. 43 (Goldfarb NYT Opening Rpt.) ¶¶ 225-246, Figs. 18-30, App. C.

15. Dr. Goldfarb's trend analysis

    a. *See* Ex. 54 (Goldfarb Ziff Opening Rpt.) § V(B)(3)-(4); Ex. 55 (Goldfarb Ziff Rebuttal Rpt.) ¶¶ 63-66; Ex. 43 (Goldfarb NYT Opening Rpt.) § VI(B)-(C); Ex. 40 (Goldfarb DNP Opening Rpt.) § VI(B)-(C); Ex. 38 (Goldfarb CIR Opening Rpt.) § VI(B)-(C); Ex. 58 (Goldfarb Intercept Opening Rpt.) § V(B); Ex. 59 (Goldfarb CIR/Intercept Reply Rpt.) § II(D).

16. Dr. Goldfarb's asset-turnover ratio

    a. *See* Ex. 49 (Goldfarb Ziff Reply Rpt.) ¶ 188 & Fig. 6.

17. Ms. Frederiksen-Cross's opinions on LLM training, model behavior, and memorization

    a. *See* Ex. 50 (Frederiksen-Cross News Rebuttal Rpt.) ¶¶ 28, 43-46, 151-52, 181-99.

18. Ms. Frederiksen-Cross's opinions on OpenAI's mental state

a. *See* Ex. 50 (Frederiksen-Cross News Rebuttal Rpt.) ¶¶ 28, 42, 43, 43 n.15, 56, 65, 136.

Dated: September 24, 2026

Respectfully submitted,

/s/ Justin A. Nelson
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