UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: OPENAI, INC., COPYRIGHT INFRINGEMENT LITIGATION This Document Relates To: News Cases 1:23-cv-11195-SHS-OTW 1:24-cv-01515-SHS-OTW 1:24-cv-03285-SHS-OTW 1:24-cv-04872-SHS-OTW 1:25-cv-04315-SHS-OTW	25-md-3143 (SHS) (OTW)

NEWS PLAINTIFFS' OPPOSITION TO OPENAI DEFENDANTS' MOTION FOR LEAVE TO FILE SUR-REPLY TO NEWS PLAINTIFFS' MOTION FOR SANCTIONS

News Plaintiffs oppose OpenAI's motion for leave (ECF 2054) to file a Sur-Reply in further opposition to News Plaintiffs' Motion for Sanctions because OpenAI has not established good cause. Should this Court consider the Sur-Reply (ECF 2054-1), it confirms that News Plaintiffs never received a "representative" sample of ChatGPT conversations and that OpenAI could have searched ChatGPT conversations for News Plaintiffs' content all along—something that it never disclosed to News Plaintiffs or this Court.

First, the Supplemental Expert Report of Dr. Tom Goldstein (ECF 1933-2) is not new evidence. The Times and *Daily News* Plaintiffs served Dr. Goldstein's Supplemental report on OpenAI on July 14, 2026, one month before OpenAI filed its Opposition on August 13, 2026. OpenAI responded to that report in its Opposition, including attaching a declaration from its

technical expert (ECF 1673-15) to support its claim that OpenAI "deliberately engineered the 9 million dataset to inflate RAG data." ECF 2054-1 at 2. OpenAI's proposed Sur-Reply underscores the prejudice to News Plaintiffs as it demonstrates that they cannot know what a "representative" sample would look like *because none has ever been produced.* The 20 million sample has been corrupted by OpenAI's deletions of billions of ChatGPT conversations and further substitutions, *see e.g.* ECF 1618 at 12-18 (News Plaintiffs' Opening Brief), and the 9 million sample, OpenAI admits, "is not a representative sample of ChatGPT conversations and cannot serve as a valid benchmark," ECF 2054-1 at 2.

Second, OpenAI's proposed Sur-Reply confirms that, all along, OpenAI could have searched newly generated ChatGPT conversations for Plaintiffs' content—but it never disclosed that capability to News Plaintiffs or the Court. ECF 2054-1 at 3 (confirming OpenAI's "ability to search data that is less than 30 days old, which OpenAI routinely reviews for 'safety purposes.'").

Third, the remainder of OpenAI's proposed Sur-Reply rehashes a well-trodden record, inaccurately characterizes a court transcript, and improperly and perhaps more importantly, incorrectly, discusses the substance of confidential settlement conferences with this Court.

Dated: September 25, 2026

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