UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: OPENAI, INC. COPYRIGHT INFRINGEMENT LITIGATION	:	No. 1:25-md-03143-SHS-OTW Hon. Sidney H. Stein Hon. Ona T. Wang
THIS DOCUMENT RELATES TO: Case No. 1:23-cv-11195-SHS-OTW	:	

OPENAI'S AMENDED ANSWER TO PLAINTIFF THE NEW YORK TIMES COMPANY'S SECOND AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15, Defendants OpenAI, Inc., OpenAI LP[1], OpenAI GP, LLC, OpenAI, LLC, OpenAI OpCo LLC, OpenAI Global LLC, OAI Corporation LLC[2], and OpenAI Holdings, LLC (collectively, "OpenAI"), by and through the undersigned counsel, submit the following answer to Plaintiff's Second Amended Complaint.

OpenAI states that the headings and sub-headings throughout the Second Amended Complaint do not constitute well-pleaded allegations of fact and, therefore, require no response. To the extent a response is deemed required, OpenAI denies the allegations contained in the Second Amended Complaint's headings and sub-headings.

OpenAI denies all allegations in the Second Amended Complaint that are not explicitly admitted and otherwise answers as follows:

I. RESPONSE TO NATURE OF THE ACTION[3]

1. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

2. Denied.

3. OpenAI admits that the Copyright Act "promote[s] the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const. art. I, § 8, cl. 8. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

4. Denied.

[1] OpenAI LP is now known as OpenAI OpCo, LLC.
2 OAI Corporation, LLC converted in September 2023 from a limited liability company to a corporation named OAI Corporation.
3 OpenAI neither admits nor denies the contents of the various headings and subheadings in the complaint, which are reproduced herein solely for convenience.

5. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff and about Microsoft Corporation, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

6. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Microsoft Corporation, and on that basis denies them. OpenAI admits that its valuation is over $90 billion. OpenAI denies any remaining allegations of this paragraph.

7. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

8. To the extent the allegations of this paragraph purport to quote from portions of publicly available written statements, the full text of those statements speaks for itself. OpenAI denies any remaining allegations of this paragraph.

9. Denied.

II. RESPONSE TO JURISDICTION AND VENUE

10. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is deemed required, OpenAI admits that this action purports to arise under the copyright laws of the United States, 17 U.S.C. § 101 et seq., and that the Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). OpenAI denies any remaining allegations of this paragraph.

11. For the purposes of this action, OpenAI does not contest personal jurisdiction. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny the allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

12. OpenAI lacks knowledge or information sufficient to admit or deny the allegations

of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

13. For the purposes of this action, OpenAI does not contest venue. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Microsoft. OpenAI denies any remaining allegations of this paragraph.

III. RESPONSE TO THE PARTIES

14. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them.

15. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI admits that Microsoft Corporation committed to a multi-year, multi-billion-dollar investment in OpenAI. OpenAI admits that Microsoft Corporation has a minority economic interest in OpenAI Global, LLC, a capped profit company. OpenAI denies any remaining allegations of this paragraph.

16. To the extent the allegations of this paragraph are directed at Microsoft, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI admits that it has entered into a strategic partnership with Microsoft that involves compute, commercial, and investment collaboration. To the extent the allegations of this paragraph purport to quote from a publicly available earnings call, the full text of the earnings call speaks for itself. To the extent the allegations of this paragraph summarize or characterize or are inconsistent with that earnings call, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

17. OpenAI admits that OpenAI, Inc., OpenAI LP, OpenAI GP, LLC, OpenAI, LLC,

OpenAI OpCo, LLC, OpenAI Global, LLC, OAI Corporation, and OpenAI Holdings, LLC are Delaware entities. OpenAI admits that OpenAI, Inc., OpenAI LP, OpenAI GP, LLC, OpenAI, LLC, OpenAI OpCo, LLC, OpenAI Global, LLC, OAI Corporation, and OpenAI Holdings, LLC are related entities. OpenAI denies any remaining allegations of this paragraph.

18. OpenAI admits that OpenAI, Inc. is a Delaware nonprofit corporation with a principal place of business in San Francisco, California. OpenAI admits that OpenAI, Inc. was formed in December 2015. OpenAI denies any remaining allegations of this paragraph.

19. OpenAI admits that the entity formerly known as OpenAI LP was formed in 2018, renamed "OpenAI LP" in 2019, and is now known as OpenAI OpCo, LLC. OpenAI denies the remaining allegations of this paragraph.

20. OpenAI admits that OpenAI GP, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI admits that OpenAI, Inc. is the single member of OpenAI GP, LLC. OpenAI admits that OpenAI GP, LLC is a manager of OpenAI Global, LLC. OpenAI denies any remaining allegations of this paragraph.

21. OpenAI admits that OpenAI, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI admits that OpenAI, LLC was formed in September 2020. OpenAI denies any remaining allegations of this paragraph.

22. OpenAI admits that OpenAI OpCo, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI denies any remaining allegations of this paragraph.

23. OpenAI admits that OpenAI Global, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI admits that Microsoft has a minority economic interest in OpenAI Global, LLC. OpenAI denies any remaining allegations

of this paragraph.

24. Denied.

25. OpenAI admits that OpenAI Holdings, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI admits that OpenAI, Inc. and Aestas, LLC are members of OpenAI Holdings, LLC. OpenAI admits that Aestas Management Company, LLC is the sole member of Aestas, LLC. OpenAI admits that Aestas Management Company, LLC is a Delaware limited liability company. OpenAI denies the remaining allegations of this paragraph.

IV. RESPONSE TO FACTUAL ALLEGATIONS

A. Response to The New York Times and its Mission

1. Response to *Almost Two Centuries of High-Quality, Original, Independent News*

26. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

27. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

28. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

29. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

30. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

31. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

2. **Response to *Groundbreaking, In-Depth Journalism and Breaking News at Great Cost***

32. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

33. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

34. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

35. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

36. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

37. OpenAI lacks knowledge or information sufficient to admit or deny the allegations

of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

3. **Response to *A Commitment to Quality Journalism***

38. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

39. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

40. To the extent the allegations of this paragraph purport to quote from or reference a publicly available webpage, the full text of that webpage speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with the full text available at that link, OpenAI denies those allegations. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

41. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

42. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

43. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

44. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

45. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

46. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

4. **Response to *GenAI Products Threaten High-Quality Journalism***

47. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

48. Denied.

49. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

50. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

51. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

52. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

53. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

54. OpenAI admits that The Times reached out to OpenAI in April 2023. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff and Microsoft Corporation, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

B. Response to Defendants' GenAI Products

1.* Response to *A Business Model Based on Mass Copyright Infringement

55. OpenAI admits that OpenAI, Inc. was formed in 2015 as a non-profit artificial intelligence research company. OpenAI admits that Sam Altman, Greg Brockman, Elon Musk, Reid Hoffman, Jessica Livingston, Peter Thiel, Amazon Web Services, Infosys, and YC Research committed $1 billion to support OpenAI. OpenAI denies any remaining allegations of this paragraph.

56. To the extent the allegations of this paragraph purport to quote from a publicly available press release, the full text of the press release speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that press release, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

57. OpenAI admits that it announced the creation of OpenAI LP in March 2019.

OpenAI admits that OpenAI LP was a "capped-profit" company. OpenAI admits that OpenAI's valuation is more than $90 billion. OpenAI admits that its revenue in 2024 was over $1 billion. OpenAI denies any remaining allegations of this paragraph.

58. OpenAI admits that GPT-1 and GPT-2 are open-source and available for public review. OpenAI denies any remaining allegations of this paragraph.

59. To the extent the allegations of this paragraph purport to quote from a publicly released research paper, the full text of that research paper speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that research paper, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

60. To the extent the allegations of this paragraph purport to quote from a publicly available interview, the full text of that interview speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that interview, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

61. OpenAI admits that it released ChatGPT in November 2022. OpenAI admits that ChatGPT recognizes and processes text inputs from a user and generates text outputs in response. OpenAI admits that, by April 2024, ChatGPT had more than 100 million users across 185 countries. OpenAI denies any remaining allegations of this paragraph.

62. OpenAI admits that OpenAI OpCO, LLC offers products and services powered by its GPT models to consumers and businesses. OpenAI admits that it offers a business-focused service called ChatGPT Enterprise. OpenAI admits that it licenses its technology to corporate clients. OpenAI denies any remaining allegations of this paragraph.

63. To the extent the allegations of this paragraph purports to cite a publicly available

press release, the full text of that press release speaks for itself. To the extent the allegations of this paragraph purport to summarize, characterize, or are inconsistent with that press release, OpenAI denies those allegations. To the extent the allegations of this paragraph purport to cite a publicly available news article, the full text of that news article speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that news article, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

64. Denied.

65. Denied.

66. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. To the extent the allegations of this paragraph purport to quote from a publicly available interview, the full text of that interview speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that interview, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

67. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Microsoft Corporation, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

68. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Microsoft Corporation, and on that basis denies them. OpenAI admits that it has worked with Microsoft to build multiple supercomputing systems powered by Azure, which have been used to train its models. To the extent the allegations of this paragraph purport to quote

from a publicly available speech, the full text of that speech speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that speech, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

69. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. To the extent the allegations of this paragraph purport to quote from a publicly available interview, the full text of that interview speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that interview, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

70. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. To the extent the allegations of this paragraph purport to quote from a publicly available news article, the full text of that news article speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that news article, OpenAI denies those allegations. To the extent the allegations of this paragraph purport to quote from a publicly available press release, the full text of that press release speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that press release, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

71. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations,

and on that basis denies them. To the extent the allegations of this paragraph purport to quote from a publicly available research paper, the full text of that research paper speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that research paper, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

72. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI admits that it released in beta Internet browsing capabilities within ChatGPT to ChatGPT Plus users in May 2023. OpenAI denies any remaining allegations of this paragraph.

73. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. To the extent the allegations of this paragraph purport to quote from a publicly available interview, the full text of that interview speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that interview, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

74. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. To the extent the allegations of this paragraph purport to quote from a publicly available interview, the full text of that interview speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that interview, OpenAI denies those allegations. OpenAI denies any remaining allegations of this

paragraph. OpenAI denies any remaining allegations of this paragraph.

2. **Response to *How GenAI Models Work***

75. OpenAI admits that some of OpenAI OpCo, LLC's products rely on technology that can be described as a "large language model." OpenAI admits that "large language model" can be abbreviated as "LLM." OpenAI admits that GPT models are large language models. OpenAI admits that the models that power ChatGPT may recognize and process text inputs from a user and generate text outputs in response. OpenAI denies any remaining allegations of this paragraph.

76. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

77. OpenAI admits that its models are made up of large quantities of numbers called "parameters." OpenAI denies the remaining allegations of this paragraph.

78. OpenAI admits that its models are computer programs that are developed using artificial intelligence and machine learning techniques. OpenAI admits that pre-training a model involves teaching language to a model by showing it a wide range of text, and, utilizing sophisticated statistical and computational analysis, having it try to predict the word that comes next in each of a huge range of sentences. OpenAI admits that this process involves breaking text down into roughly word-length "tokens," which are then converted into numbers. OpenAI admits that the model uses the training data to calculate numerical representations of each token's semantic meaning. OpenAI admits that a process known as a "transformer" then allows the model to understand the context created by surrounding words and sentences, thus enabling an understanding of a word's different meanings depending on context. OpenAI denies any remaining allegations of this paragraph.

79. OpenAI admits that a pre-trained model may be fine-tuned. OpenAI admits that fine-tuning may involve training a model on additional text. OpenAI admits that it uses reinforcement learning from human feedback to make its models safer, more helpful, and more aligned. OpenAI denies any remaining allegations of this paragraph.

80. To the extent the allegations of this paragraph purport to quote from a publicly available paper, the full text of that paper speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that paper, OpenAI denies those allegations. OpenAI denies the remaining allegations of this paragraph.

81. OpenAI admits that its models may use Retrieval Augmented Generation. OpenAI admits that this process involves retrieving relevant contextual information from a data source and passing that information to the model alongside the user's input. OpenAI admits that this information is then used to improve the model's output by augmenting the model's base knowledge. To the extent the allegations of this paragraph purport to cite a publicly available press release, the full text of that press release speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

C. Response to Defendants' Unauthorized Use and Copying of Times Content

82. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

1. Response to *Unauthorized Reproduction of Times Works During GPT Model Training*

83. OpenAI admits that GPT models are large language models. OpenAI admits that GPT-1 was first launched in 2018, GPT-2 was first launched in 2019, GPT-3 was first launched in

2020, GPT-3.5 was first launched in 2022, and GPT-4 was first launched in 2023. OpenAI denies the remaining allegations of this paragraph.

84. OpenAI admits that pre-training a model involves teaching language to a model by showing the model a wide range of text, and, utilizing sophisticated statistical and computational analysis, having it try to predict the next token in each of a vast number of sequences. To the extent the allegations of this paragraph purport to quote from a publicly available press release, the full text of that press release speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that press release, OpenAI denies those allegations. OpenAI admits that it has published information about the pre-training process for GPT models. OpenAI denies any remaining allegations of this paragraph.

85. OpenAI admits that GPT-2 is a large transformer-based language model with 1.5 billion parameters. OpenAI admits that GPT-2 was trained using a dataset known as WebText. OpenAI admits that WebText contains a text subset of outbound links from Reddit, a social media platform, that received at least 3 karma. To the extent the allegations of this paragraph purport to quote from publicly available press releases, research papers, or GitHub repositories, the full text and contents of those press releases, research papers, or GitHub repositories speak for themselves. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with those press releases, research papers, or GitHub repositories, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

86. OpenAI admits that GPT-3 is an autoregressive language model with 175 billion parameters trained on datasets known as Common Crawl (filtered), WebText2, Books1, Books2, and Wikipedia. To the extent the allegations of this paragraph purport to cite a publicly available research paper, the full text of that research paper speaks for itself. To the extent the allegations of

this paragraph purport to summarize or characterize or are inconsistent with that research paper, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

87. OpenAI admits that WebText2 is an expanded version of the WebText dataset created by collecting links over a longer period of time. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that research paper, OpenAI denies those allegations. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about OpenWebtext2, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

88. OpenAI admits that a filtered Common Crawl dataset had the highest weight in the training mix for GPT-3. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about C4 or the Common Crawl organization, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

89. OpenAI admits that Times content, including content from News, Cooking, Wirecutter, and The Athletic, appears on the internet. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about C4 or about any singular "Common Crawl dataset," and on that basis denies those allegations. OpenAI denies any remaining allegations of this paragraph.

90. To the extent the allegations of this paragraph purport to quote from a publicly available research paper, the full text of that research paper speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that research paper, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

91. OpenAI lacks knowledge or information sufficient to admit or deny the allegations

of this paragraph about "experts" and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

92. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

93. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

94. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

95. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

96. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

97. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

2. Response to *Embodiment of Unauthorized Reproductions and Derivatives of Times Works in GPT Models*

98. Denied.

99. OpenAI lacks knowledge or information sufficient to admit or deny the allegations

of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

100. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

101. Denied.

3. **Response to *Unauthorized Public Display of Times Works in GPT Product Outputs***

102. OpenAI admits that it offers services called ChatGPT, ChatGPT Plus, ChatGPT Enterprise, and that those services are powered by OpenAI's GPT models. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

103. Denied.

104. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

105. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

106. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

107. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

4. **Response to *Unauthorized Retrieval and Dissemination of Current News***

108. Denied.

109. Denied.

110. Denied.

111. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

a) Response to *Examples of Synthetic Search Results from Bing Chat*

112. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

113. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

114. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

115. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

116. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

117. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

b) Response to *Synthetic Search Results from ChatGPT Browse with Bing*

118. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

119. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

120. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

121. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

122. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

123. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

5. **Response to *Willful Infringement***

124. OpenAI admits that it trained, fine-tuned, and tested GPT models. To the extent the allegations of this paragraph purport to quote from a publicly available paper, the full text of that paper speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that paper, OpenAI denies those allegations. OpenAI denies the remaining allegations of this paragraph.

125. To the extent the allegations of this paragraph relate to a claim that has been dismissed, no response is required and OpenAI denies those allegations on that basis. OpenAI denies the remaining allegations of this paragraph.

126. To the extent the allegations of this paragraph relate to a claim that has been dismissed, no response is required and OpenAI denies those allegations on that basis. OpenAI denies the remaining allegations of this paragraph.

127. Denied.

128. To the extent the allegations of this paragraph purport to quote from a publicly available research paper, the full text of that research paper speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that research paper, OpenAI denies those allegations. OpenAI denies any remaining allegations of this

paragraph.

129. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them. To the extent the allegations of this paragraph purport to quote from a publicly available paper, the full text of that paper speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that paper, OpenAI denies those allegations. OpenAI denies the remaining allegations of this paragraph.

130. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph related to "Newspaper algorithms," and on that basis denies them. To the extent the allegations of this paragraph purport to quote from a publicly available paper, the full text of that paper speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with that paper, OpenAI denies those allegations. OpenAI denies the remaining allegations of this paragraph.

131. To the extent the allegations of this paragraph purport to quote from or reference publicly available websites, the full text of those websites speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with the full text available at that link, OpenAI denies those allegations. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

132. Denied.

133. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

D. Response to Misappropriation of Commercial Referrals

134. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

135. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

136. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

137. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

138. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

139. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

140. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

141. The allegations of this paragraph relate to a claim that has been dismissed, and thus

no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

142. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

E. Response to "Hallucinations" Falsely Attributed to The Times

143. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

144. OpenAI lacks knowledge or information about the allegations of this paragraph about a third party's use of ChatGPT, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

145. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

146. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

147. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

148. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

149. Denied.

F. Response to Profit to Defendants

150. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations,

and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

151. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

152. Denied.

153. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Google, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

154. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Google, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

155. Denied.

156. OpenAI admits that ChatGPT had more than 300 million weekly active users as of December 2024. OpenAI admits that it offers a subscription plan, called ChatGPT Plus, that is available for $20 per month. To the extent the allegations of this paragraph purport to quote a publicly available press release, the full text of that press release speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with the press release, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

157. To the extent the allegations of this paragraph purport to cite a publicly available news article, the full text of that article speaks for itself. To the extent the allegations of this paragraph purport to summarize or characterize or are inconsistent with the news article, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

158. OpenAI admits that Microsoft invested $1 billion in OpenAI in 2019. OpenAI admits that Microsoft has made additional investments in OpenAI. OpenAI admits that its current valuation is more than $80 billion. OpenAI denies any remaining allegations of this paragraph.

159. OpenAI lacks knowledge or information sufficient to admit or deny allegations about Microsoft Corporation, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

160. OpenAI lacks knowledge or information sufficient to admit or deny allegations about Microsoft Corporation, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

G. Response to Harm to The Times

161. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff and its readers, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

162. Denied.

163. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

164. Denied.

COUNT I: Copyright Infringement (17 U.S.C. § 501)

Against All Defendants

165. This paragraph incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–157.

166. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

167. Denied.

168. Denied.

169. Denied.

170. Denied.

171. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

172. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

173. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

174. Denied.

175. Denied.

COUNT II: Vicarious Copyright Infringement

Against Microsoft, OpenAI Inc., OpenAI GP, OpenAI LP, OAI Corporation LLC, OpenAI Holdings LLC, and OpenAI Global LLC

176. This paragraph incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–168.

177. OpenAI lacks knowledge or information sufficient to admit or deny allegations

about Microsoft Corporation, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

178. Denied.

179. Denied.

180. Denied.

COUNT III: Contributory Copyright Infringement

Against Microsoft

181. This paragraph incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–173.

182. The allegations of this paragraph relate to a claim that has not been alleged against OpenAI, and thus no response is required. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations about Microsoft Corporation, and on that basis denies them.

183. The allegations of this paragraph relate to a claim that has not been alleged against OpenAI, and thus no response is required. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations about Microsoft Corporation, and on that basis denies them.

184. The allegations of this paragraph relate to a claim that has not been alleged against OpenAI, and thus no response is required. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations about Microsoft Corporation, and on that basis denies them.

COUNT IV: Contributory Copyright Infringement

Against All Defendants

185. This paragraph incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–177.

186. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

187. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

COUNT V: Digital Millennium Copyright Act – Removal of Copyright Management Information (17 U.S.C. § 1202(b)(1))

Against OpenAI Inc., OpenAI LP, OpenAI GP, OpenAI LLC, OpenAI OpCo LLC, OAI Corporation LLC, OpenAI Holdings LLC, and OpenAI Global LLC

188. This paragraph incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–187.

189. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

190. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

191. The allegations of this paragraph relate to a claim that has been dismissed, and thus

no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

192. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

193. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

194. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

195. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

196. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

197. The allegations of this paragraph relate to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

COUNT VI: Common Law Unfair Competition By Misappropriation

Against All Defendants

Dismissed pursuant to the Court's April 4, 2025 Order.

COUNT VII: Trademark Dilution (15 U.S.C. § 1125(c))

Against All Defendants

198. This paragraph incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–197.

199. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph and on that basis denies them.

200. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph and on that basis denies them.

201. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

202. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

203. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

204. To the extent the allegations of this paragraph are directed at Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies the remaining allegations of this paragraph.

PRAYER FOR RELIEF

In response to the prayer for relief, OpenAI denies that Plaintiffs are entitled to the

requested relief, or to any relief whatsoever, including because Plaintiffs have suffered no injury sufficient to confer standing to bring any claim for relief.

DEMAND FOR JURY TRIAL

With respect to the jury demand contained in the Complaint, OpenAI states that no response is required. To the extent a response is deemed required, OpenAI denies that Plaintiffs' claims are properly triable to a jury.

AFFIRMATIVE DEFENSES

In further answer to the allegations made by Plaintiff in the Complaint, OpenAI asserts the following affirmative defenses. OpenAI does not concede that it has the burden of proof on the defenses listed below.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs do not own or hold exclusive rights under 17 U.S.C. § 106 or any copyright law over each work that was allegedly infringed by OpenAI.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because the copyright registrations purporting to cover some or all of the works in dispute are invalid and do not satisfy the requirements of 17 U.S.C. § 411–412.

THIRD AFFIRMATIVE DEFENSE

To the extent there is copying of copyrightable expression, that copying constitutes fair use.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrines of copyright misuse and unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have suffered no provable injury as a result of the challenged conduct, which *inter alia* precludes relief under 17 U.S.C. § 1203(a).

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims fail in whole or in part because the complained-of use was validly licensed by express or implied license.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrines of waiver, abandonment, and/or forfeiture.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' remedies are barred at least in part by the applicable statutes of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery of damages because of and to the extent of its failure to mitigate its alleged damages (to which, in any event, they are not entitled).

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent they claim rights to elements of works or to works which are not protectable under copyright law, or that are in the public domain, lack the requisite originality, are unregistered, or are works to which copyright protection has been abandoned.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims of copyright infringement are barred or limited by the doctrine of merger.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims of copyright infringement are barred or limited by the idea/expression dichotomy.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims of copyright infringement are barred or limited because the material in which Plaintiffs claim copyright constitutes "*scènes à faire*."

SIXTEENTH AFFIRMATIVE DEFENSE

To the extent there is copying of copyrightable expression, that copying is *de minimis*.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims of copyright infringement are barred or limited because the material in which Plaintiffs claim copyright constitutes unprotectible facts.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims fail, in whole or in part, for failure to state a claim.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because the acts alleged in the Second Amended Complaint are not an infringement of copyright, including because the alleged acts are fair use and/or de minimis, and/or because copyright protection is barred by the doctrine of merger, the doctrine of scène à faire, or the idea/expression dichotomy.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs are not entitled to injunctive relief (temporarily, preliminarily, or permanently), including because any injury to it is not immediate or irreparable, Plaintiffs would have an adequate remedy at law, the balance of

hardships favors no injunction, and the public interest is best served by no injunction.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because any reproduction, distribution, or display of any allegedly infringing outputs, or copies allegedly made in the generative search process, were caused by the acts or omissions of other persons or entities for whose conduct OpenAI is not legally responsible.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because they are barred by the safe harbor provisions of the Digital Millennium Copyright Act, 17 U.S.C. § 512 (a)-(d).

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because all of the models accused of infringement, and all of OpenAI's products and services offered in connection with those accused models, are capable of substantial non-infringing uses.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs' allegations do not demonstrate a cognizable trademark use.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs' alleged trademarks are not famous, or inherently distinctive, and have not acquired secondary meaning.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because their marks are not sufficiently famous or distinctive to warrant protection under federal or state dilution laws.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, based on the doctrine of nominative fair

use.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claim for damages is barred by the Eighth and Fourteenth Amendments to the U.S. Constitution.

TWENTY-NINTH AFFIRMATIVE DEFENSE

OpenAI reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, and any other defenses at law or in equity, that may now exist or in the future become available based on discovery and further factual investigation.

Dated: December 10, 2025

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