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[CAPTION CONTINUED ON NEXT PAGE]

8
9 Attorneys for Defendants OPENAI, INC., OPENAI, L.P., OPENAI
OPCO, L.L.C., OPENAI GP, L.L.C., OPENAI STARTUP FUND GP I,
10 L.L.C., OPENAI STARTUP FUND I, L.P., OPENAI STARTUP FUND
MANAGEMENT, LLC, OPENAI, L.L.C., OPENAI GLOBAL, LLC,
11 OAI CORPORATION, OPENAI HOLDINGS, LLC, OPENAI
HOLDCO, LLC, OPENAI STARTUP FUND SPV I, L.P., and OPENAI
12 STARTUP FUND SPV GP I, L.L.C.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 J. DOE 1, et al.,
17 Plaintiffs,
18 v.
19 GITHUB, INC., MICROSOFT
20 CORPORATION, OPENAI, INC., et al.,
21 Defendants.

Case No. 4:22-cv-06823-JST
Case No. 4:22-cv-07074-JST

Hon. Jon S. Tigar

**DEFENDANTS' ANSWER TO
SECOND AMENDED COMPLAINT**

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Defendants OpenAI, Inc.; OpenAI, L.P.; OpenAI OpCo, L.L.C.; OpenAI GP, L.L.C.; OpenAI Startup Fund GP I, L.L.C.; OpenAI Startup Fund I, L.P.; OpenAI Startup Fund Management, LLC; OpenAI, L.L.C.; OpenAI Global, LLC (“OpenAI Global”); OAI Corporation (“OAI”); OpenAI Holdings, LLC (“OpenAI Holdings”); OpenAI Holdco, LLC; OpenAI Startup Fund SPV I, L.P.; and OpenAI Startup Fund SPV GP I, LLC (collectively “Defendants”), by and through the undersigned counsel, submit the following answer to the Complaint filed by Plaintiffs J. Doe 1, J. Doe 2, J. Doe 3, J. Doe 4 and J. Doe 5 (“Plaintiffs”).

Defendants state that the headings and sub-headings throughout the Complaint do not constitute well-pleaded allegations of fact and, therefore, require no response. To the extent a response is deemed required, Defendants deny the allegations contained in the Complaint’s headings and sub-headings.

Defendants deny all allegations in the Complaint that are not explicitly admitted and otherwise answers as follows:

I. OVERVIEW: A BRAVE NEW WORLD OF SOFTWARE PIRACY

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

2. OpenAI admits that artificial intelligence is a branch of computer science whose goal is to create computing systems that can behave in a way typically associated with human intelligence. OpenAI admits that machine learning is an approach to artificial intelligence where computer systems can learn to accomplish tasks based on information or experimentation, rather than being programmed step by step. OpenAI denies any remaining allegations in this paragraph.

3. To the extent the allegations in this paragraph are directed at GitHub, OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

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

1 5. To the extent the allegations in this paragraph are directed at Microsoft, OpenAI
2 lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about
3 Microsoft and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
4 this paragraph.

5 6. OpenAI admits that, in 2019, Microsoft committed to invest \$1 billion in OpenAI
6 to support building artificial general intelligence with widely distributed economic benefits. To
7 the extent the allegations in this paragraph are directed at Microsoft, OpenAI lacks knowledge or
8 information sufficient to admit or deny the allegations of this paragraph about Microsoft and on
9 that basis OpenAI denies them. OpenAI lacks knowledge or information sufficient to admit or
10 deny the allegations in this paragraph related to what was “reported” by unidentified sources.
11 OpenAI denies any remaining allegations in this paragraph.

12 7. OpenAI admits that, in 2019, Microsoft committed to invest \$1 billion in OpenAI
13 to support building artificial general intelligence with widely distributed economic benefits.
14 OpenAI denies any remaining allegations in this paragraph.

15 8. To the extent the allegations in this paragraph are directed at Microsoft, OpenAI
16 lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about
17 Microsoft and on that basis OpenAI denies them. OpenAI denies the remaining allegations of this
18 paragraph.

19 9. OpenAI admits that OpenAI announced Codex in 2021. OpenAI admits that
20 Codex is an artificial intelligence system that translates natural language to code. OpenAI lacks
21 knowledge or information sufficient to admit or deny the remaining allegations of this paragraph,
22 and on that basis denies them.

23 10. Denied.

24 11. Denied.

25 12. To the extent the allegations in this paragraph are directed at Microsoft, OpenAI
26 lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about
27 Microsoft and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
28 this paragraph.

13. Denied.

14. Denied.

15. Denied.

II. JURISDICTION AND VENUE

16. OpenAI admits that Plaintiffs purport to bring this case as a class action, and that they seek injunctive relief and damages. OpenAI denies any remaining allegations in this paragraph.

17. For purposes of this action, OpenAI does not contest jurisdiction and venue. OpenAI denies any remaining allegations of this paragraph.

III. INTRADISTRICT ASSIGNMENT

18. For purposes of this action, OpenAI does not contest assignment of this case to the San Francisco Division of the United States District Court for the Northern District of California. OpenAI denies any remaining allegations of this paragraph.

IV. PARTIES

A. Plaintiffs

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

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

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

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

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

B. Defendants

24. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about

1 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
2 paragraph.

3 25. The allegations of this paragraph are directed at Microsoft, and/or OpenAI lacks
4 knowledge or information sufficient to admit or deny the allegations of this paragraph about
5 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
6 this paragraph.

7 26. OpenAI admits that OpenAI, Inc. is a Delaware nonprofit corporation with a
8 principal place of business in San Francisco, CA. OpenAI denies any remaining allegations of
9 this paragraph.

10 27. OpenAI admits that OpenAI, L.P. was a Delaware limited partnership with a
11 principal place of business in San Francisco, CA and is now known as OpenAI OpCo., L.L.C.
12 OpenAI denies any remaining allegations of this paragraph.

13 28. OpenAI admits that OpenAI OpCo, L.L.C. is a Delaware limited liability company
14 with a principal place of business in San Francisco, CA. OpenAI admits that OpenAI OpCo,
15 L.L.C. is a research and deployment company with a mission to ensure that artificial intelligence
16 benefits all of humanity. OpenAI denies any remaining allegations of this paragraph.

17 29. OpenAI admits that OpenAI GP, L.L.C. is a Delaware limited liability company
18 with a principal place of business in San Francisco, CA. OpenAI denies any remaining
19 allegations of this paragraph.

20 30. OpenAI admits that OpenAI Startup Fund I, L.P. is a Delaware limited partnership
21 with a principal place of business in San Francisco, CA. OpenAI denies any remaining
22 allegations of this paragraph.

23 31. OpenAI admits that OpenAI Startup Fund GP I, L.L.C. is a Delaware limited
24 liability company with a principal place of business in San Francisco, CA. OpenAI admits that
25 OpenAI Startup Fund GP I, L.L.C. is the general partner of OpenAI Startup Fund I, L.P. OpenAI
26 denies any remaining allegations of this paragraph.

1 32. OpenAI admits that OpenAI Startup Fund Management, LLC is a Delaware
2 limited liability company with a principal place of business in San Francisco, CA. OpenAI denies
3 any remaining allegations of this paragraph.

4 33. OpenAI admits that OpenAI, L.L.C. is a Delaware limited liability company with a
5 principal place of business in San Francisco, California. OpenAI denies any remaining allegations
6 of this paragraph.

7 34. OpenAI admits that OpenAI Global, LLC is a Delaware limited liability company
8 with a principal place in San Francisco, California. OpenAI admits that OpenAI Global, L.L.C.'s
9 only members are Microsoft and OAI Corporation. OpenAI denies any remaining allegations of
10 this paragraph.

11 35. OpenAI admits that OAI Corporation is a Delaware corporation with its principal
12 place of business in San Francisco, California. OpenAI denies any remaining allegations of this
13 paragraph.

14 36. OpenAI admits that OpenAI Holdings, LLC is a Delaware limited liability
15 company with a principal place in San Francisco, California. OpenAI admits that OpenAI, Inc.
16 and Aestas, LLC are members of OpenAI Holdings, LLC. OpenAI denies any remaining
17 allegations of this paragraph.

18 37. Admitted.

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

21 39. Admitted.

22 40. OpenAI admits that OpenAI Startup Fund SPV GP I, L.L.C. is a Delaware limited
23 liability company with a principal place in San Francisco, California. OpenAI denies any
24 remaining allegations of this paragraph.

25 **V. AGENTS AND CO-CONSPIRATORS**

26 41. Denied.

27 42. Denied.

28 43. Denied.

1 44. Denied.

2 45. Denied.

3 VI. CLASS ALLEGATIONS

4 A. Class Definitions

5 46. Denied.

6 B. Numerosity

7 47. Denied.

8 C. Typicality

9 48. Denied.

10 D. Commonality & Predominance

11 49. Denied

12 50. Denied.

13 E. Adequacy

14 51. Denied.

15 F. Other Class Considerations

16 52. Denied.

17 53. Denied.

18 54. Denied

19 VII. FACTUAL ALLEGATIONS

20 A. Introduction

21 55. OpenAI admits that it has offered a product called Codex. OpenAI denies any
22 remaining allegations in this paragraph.

23 56. OpenAI admits it began development of Codex after December 2015 and
24 announced that it was releasing Codex through its API in private beta in August 2021.

25 57. To the extent the allegations in this paragraph are directed at GitHub, OpenAI
26 lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about
27 GitHub and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
28 paragraph.

1 58. OpenAI admits that Codex is an artificial intelligence system that translates natural
2 language to code. OpenAI admits that Codex’s training data includes both natural language and
3 billions of lines of source code from publicly available sources. To the extent the allegations in
4 this paragraph are directed at GitHub, OpenAI lacks knowledge or information sufficient to admit
5 or deny the allegations of this paragraph about GitHub and on that basis OpenAI denies them.
6 OpenAI denies any remaining allegations in this paragraph.

7 59. OpenAI admits that Codex was made available to GitHub to develop Copilot as
8 part of a partnership between the two companies. OpenAI admits that the language quoted in the
9 allegation can be found in the August 10, 2021 “OpenAI Codex” blog post on OpenAI’s publicly
10 available website. The blog post speaks for itself. To the extent the allegations in this paragraph
11 are directed at GitHub, OpenAI lacks knowledge or information sufficient to admit or deny the
12 allegations of this paragraph about GitHub and on that basis OpenAI denies them. OpenAI denies
13 any remaining allegations in this paragraph.

14 **B. Codex Outputs Copyrighted Materials Without Following the Terms of the**
15 **Applicable Licenses**

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

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

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

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

24 64. OpenAI admits that Codex is an artificial intelligence system that translates natural
25 language to code. OpenAI admits that Codex’s training data includes both natural language and
26 billions of lines of source code from publicly available sources. OpenAI admits that training a
27 model teaches programming language to a model by showing the model a wide range of natural
28 language and software code. OpenAI denies any remaining allegations in this paragraph.

1 65. Denied.

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

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

6 68. Denied.

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

9 70. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
10 of this paragraph with respect to Haverbeke's purpose, and on that basis denies them. OpenAI
11 denies any remaining allegations in this paragraph.

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

14 72. Denied.

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

17 74. To the extent the allegations in this paragraph purport to quote from portions of the
18 MIT license, the full text of that license speaks for itself. OpenAI denies any remaining
19 allegations in this paragraph.

20 75. To the extent the allegations in this paragraph purport to quote from portions of a
21 publicly available research paper, the full text of that research paper speaks for itself. OpenAI
22 denies any remaining allegations of this paragraph.

23 76. To the extent the allegations in this paragraph purport to refer to the contents of
24 open-source licenses, including the Suggested Licenses, the full texts of those licenses speak for
25 themselves. OpenAI lacks knowledge or information sufficient to admit or deny any remaining
26 allegations in this paragraph, and on that basis denies them.

27 77. Denied.

C. Copilot Outputs Copyrighted Materials Without Following the Terms of the Applicable Licenses

78. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

79. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

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

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

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

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

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

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

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

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

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

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

3 **D. Codex and Copilot Were Trained on Copyrighted Materials Offered Under**
4 **Licenses**

5 90. OpenAI admits that Codex is an artificial intelligence system. OpenAI lacks
6 knowledge or information sufficient to admit or deny the remaining allegations of this paragraph,
7 and on that basis denies them.

8 91. OpenAI admits that Codex is an artificial intelligence system that translates natural
9 language to code. OpenAI admits that Codex's training data includes both natural language and
10 billions of lines of source code from publicly available sources. OpenAI admits that training the
11 Codex model teaches programming language to it by showing the model a wide range of natural
12 language and software code, and, utilizing sophisticated statistical and computational analysis,
13 having it try to predict the snippet of code that comes next in each of a huge range of software
14 code. OpenAI denies any remaining allegations directed to OpenAI in this paragraph.

15 92. Denied.

16 93. OpenAI admits that models are computer programs that are developed using
17 artificial intelligence and machine learning techniques. OpenAI admits that training the Codex
18 model teaches programming language to it by showing the model a wide range of natural
19 language and software code, and, utilizing sophisticated statistical and computational analysis,
20 having it try to predict the snippet of code that comes next in each of a huge range of software
21 code. OpenAI denies any remaining allegations directed to OpenAI in this paragraph.

22 **E. Copilot Was Launched Despite Its Propensity for Producing Unlawful**
23 **Outputs**

24 94. OpenAI admits that Codex was trained on code in public GitHub repositories.
25 OpenAI denies any remaining allegations in this paragraph.

26 95. OpenAI admits that that certain language quoted in the allegation can be found in
27 the August 10, 2021 "OpenAI Codex" blog post on OpenAI's publicly available website. The
28 blog post speaks for itself. To the extent the allegations in this paragraph purport to quote from

1 portions of publicly available websites unaffiliated with OpenAI, the full contents of those
2 websites speak for themselves. OpenAI denies any remaining allegations in this paragraph.

3 96. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
4 knowledge or information sufficient to admit or deny the allegations of this paragraph about
5 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
6 paragraph.

7 97. To the extent the allegations in this paragraph purport to quote from a post on a
8 publicly available website unaffiliated with OpenAI, the full text of that post speaks for itself.
9 OpenAI denies any remaining allegations in this paragraph.

10 98. To the extent the allegations in this paragraph purport to quote from a blog post a
11 publicly available website unaffiliated with OpenAI, the full text of that post speaks for itself.
12 OpenAI denies any remaining allegations in this paragraph.

13 99. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
14 knowledge or information sufficient to admit or deny the allegations of this paragraph about
15 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
16 paragraph.

17 100. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
18 knowledge or information sufficient to admit or deny the allegations of this paragraph about
19 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
20 paragraph.

21 101. To the extent the allegations in this paragraph purport to quote from a post on a
22 publicly available website unaffiliated with OpenAI, the full text of that post speaks for itself.
23 OpenAI denies any remaining allegations in this paragraph.

24 102. To the extent the allegations in this paragraph purport to quote from a post on a
25 publicly available website unaffiliated with OpenAI, the full text of that post speaks for itself.
26 OpenAI denies any remaining allegations in this paragraph.

27 103. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
28 knowledge or information sufficient to admit or deny the allegations of this paragraph about

1 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
2 paragraph.

3 104. To the extent the allegations in this paragraph purport to quote from a publicly
4 available study unaffiliated with OpenAI, the full text of that study speaks for itself. OpenAI
5 denies any remaining allegations in this paragraph.

6 105. Denied.

7 106. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
8 knowledge or information sufficient to admit or deny the allegations of this paragraph about
9 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
10 paragraph.

11 107. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
12 knowledge or information sufficient to admit or deny the allegations of this paragraph about
13 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
14 paragraph.

15 108. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
16 knowledge or information sufficient to admit or deny the allegations of this paragraph about
17 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
18 paragraph.

19 **F. Copilot Reproduces the Code of the Named Plaintiffs Without Attribution**

20 109. Denied.

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

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

25 **1. Example: Copilot Outputs the Code of Doe 2 Essentially Verbatim**

26 112. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
27 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. Denied.

2. Example: Copilot Outputs the Code of Doe 1 in Modified Format

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

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. Denied.

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

122. Denied.

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

124. Denied.

3. Example: Copilot Outputs the Code of Doe 5 In Modified Format

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

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

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

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

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

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

7 131. Denied.

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

10 **4. Example: Copilot Outputs Code of Doe 5 Essentially Verbatim**

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

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

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

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

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

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

23 139. Denied.

24 140. OpenAI admits that it developed Codex. To the extent any allegations in this
25 paragraph are not directed at OpenAI, they are directed at GitHub, and/or OpenAI lacks
26 knowledge or information sufficient to admit or deny the allegations of this paragraph about
27 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
28 paragraph.

G. Codex and Copilot Were Designed to Withhold Attribution, Copyright Notices, and License Terms from Their Users

141. OpenAI denies the allegations in this paragraph to the extent they refer to Codex. The remaining allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

142. Certain allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI lacks knowledge or information sufficient to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

143. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

144. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

145. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

146. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

1 147. OpenAI denies the allegations in this paragraph to the extent they refer to Codex.
2 The remaining allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
3 knowledge or information sufficient to admit or deny the allegations of this paragraph about
4 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
5 paragraph.

6 148. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
7 knowledge or information sufficient to admit or deny the allegations of this paragraph about
8 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
9 paragraph.

10 149. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
11 knowledge or information sufficient to admit or deny the allegations of this paragraph about
12 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
13 paragraph.

14 150. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
15 knowledge or information sufficient to admit or deny the allegations of this paragraph about
16 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
17 paragraph.

18 151. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
19 knowledge or information sufficient to admit or deny the allegations of this paragraph about
20 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
21 paragraph.

22 152. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
23 knowledge or information sufficient to admit or deny the allegations of this paragraph about
24 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
25 paragraph.

26 153. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
27 knowledge or information sufficient to admit or deny the allegations of this paragraph about
28

1 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
2 paragraph.

3 154. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
4 knowledge or information sufficient to admit or deny the allegations of this paragraph about
5 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
6 paragraph.

7 155. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
8 knowledge or information sufficient to admit or deny the allegations of this paragraph about
9 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
10 paragraph.

11 156. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
12 knowledge or information sufficient to admit or deny the allegations of this paragraph about
13 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
14 paragraph.

15 157. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
16 knowledge or information sufficient to admit or deny the allegations of this paragraph about
17 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
18 paragraph.

19 **H. Open-Source Licenses Began to Appear in the Early 1990s**

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

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

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

26 161. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
27 of this paragraph, and on that basis denies them.
28

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

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

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

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

9 **I. Microsoft Has a History of Flouting Open-Source License Requirements**

10 166. The allegations of this paragraph are directed at Microsoft, and/or OpenAI lacks
11 knowledge or information sufficient to admit or deny the allegations of this paragraph about
12 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
13 this paragraph.

14 167. The allegations of this paragraph are directed at Microsoft, and/or OpenAI lacks
15 knowledge or information sufficient to admit or deny the allegations of this paragraph about
16 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
17 this paragraph.

18 168. The allegations of this paragraph are directed at Microsoft, and/or OpenAI lacks
19 knowledge or information sufficient to admit or deny the allegations of this paragraph about
20 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
21 this paragraph.

22 169. The allegations of this paragraph are directed at Microsoft, and/or OpenAI lacks
23 knowledge or information sufficient to admit or deny the allegations of this paragraph about
24 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
25 this paragraph.

26 170. The allegations of this paragraph are directed at Microsoft, and/or OpenAI lacks
27 knowledge or information sufficient to admit or deny the allegations of this paragraph about
28

1 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
2 this paragraph.

3 171. The allegations of this paragraph are directed at Microsoft, and/or OpenAI lacks
4 knowledge or information sufficient to admit or deny the allegations of this paragraph about
5 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
6 this paragraph.

7 172. The allegations of this paragraph are directed at Microsoft, and/or OpenAI lacks
8 knowledge or information sufficient to admit or deny the allegations of this paragraph about
9 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
10 this paragraph.

11 173. The allegations of this paragraph are directed at Microsoft, and/or OpenAI lacks
12 knowledge or information sufficient to admit or deny the allegations of this paragraph about
13 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
14 this paragraph.

15 174. The allegations of this paragraph are directed at Microsoft, and/or OpenAI lacks
16 knowledge or information sufficient to admit or deny the allegations of this paragraph about
17 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
18 this paragraph.

19 175. The allegations of this paragraph are directed at Microsoft, and/or OpenAI lacks
20 knowledge or information sufficient to admit or deny the allegations of this paragraph about
21 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
22 this paragraph.

23 **J. GitHub Was Designed to Cater to Open-Source Projects**

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

26 177. OpenAI lacks knowledge or information sufficient to admit or deny the allegations
27 of this paragraph, and on that basis denies them.
28

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

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

5 180. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
6 knowledge or information sufficient to admit or deny the allegations of this paragraph about
7 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
8 paragraph.

9 181. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
10 knowledge or information sufficient to admit or deny the allegations of this paragraph about
11 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
12 paragraph.

13 182. OpenAI denies the allegations in this paragraph to the extent they refer to Codex.
14 The remaining allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
15 knowledge or information sufficient to admit or deny the allegations of this paragraph about
16 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
17 paragraph.

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

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

22 185. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
23 knowledge or information sufficient to admit or deny the allegations of this paragraph about
24 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
25 paragraph.

26 186. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
27 knowledge or information sufficient to admit or deny the allegations of this paragraph about
28

1 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
2 paragraph.

3 187. The allegations of this paragraph are directed at GitHub and/or Microsoft, and/or
4 OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this
5 paragraph about GitHub and/or Microsoft, and on that basis OpenAI denies them. OpenAI denies
6 any remaining allegations in this paragraph.

7 **K. OpenAI Is Intertwined with Microsoft and GitHub**

8 188. OpenAI admits that OpenAI, Inc. is a nonprofit corporation founded in December
9 2015 by a group including Greg Brockman, Ilya Sutskever, Elon Musk, and Sam Altman.
10 OpenAI denies that Reid Hoffman is a current board member of OpenAI, Inc. The allegations
11 that Mr. Hoffman is founder of LinkedIn, that LinkedIn is a Microsoft subsidiary, and that Mr.
12 Hoffman also a member of the Microsoft Board of Directors are directed at Microsoft, and/or
13 OpenAI lacks knowledge or information sufficient to admit or deny the allegations about
14 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
15 this paragraph.

16 189. OpenAI admits that it partnered with Microsoft in 2016. To the extent the
17 allegation purports to quote from a public statement made by OpenAI, the public statement
18 speaks for itself. OpenAI denies any remaining allegations in this paragraph.

19 190. To the extent the allegation purports to quote from a public statement made by
20 OpenAI, the public statement speaks for itself. OpenAI denies any remaining allegations in this
21 paragraph.

22 191. OpenAI lacks knowledge or information about what was “reported[]” by unnamed
23 sources sufficient to admit or deny the allegations of this paragraph, and on that basis denies
24 them.

25 192. To the extent the allegations in this paragraph purport to quote from portions of a
26 publicly available website unaffiliated with OpenAI, the full content of that website speaks for
27 itself. OpenAI denies any remaining allegations in this paragraph.
28

1 193. OpenAI admits that OpenAI, LP was created to increase OpenAI's ability to raise
2 capital while still serving its mission. OpenAI denies any remaining allegations in this paragraph.

3 194. OpenAI admits that, in 2019, Microsoft committed to invest \$1 billion in OpenAI
4 to support building artificial general intelligence with widely distributed economic benefits.
5 OpenAI admits that OpenAI uses the Azure cloud platform for deep learning and AI. To the
6 extent the allegations in this paragraph purport to quote from a publicly available website, the full
7 content of that website speaks for itself. OpenAI denies the remaining allegations of this
8 paragraph.

9 195. The allegations of this paragraph are directed at Microsoft, and/or OpenAI lacks
10 knowledge or information sufficient to admit or deny the allegations of this paragraph about
11 Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in
12 this paragraph.

13 196. OpenAI admits that Microsoft and OpenAI jointly developed Azure AI
14 supercomputing technologies. To the extent the allegations in this paragraph purport to quote
15 from portions of publicly available websites unaffiliated with OpenAI, the full contents of those
16 websites speak for themselves. OpenAI denies any remaining allegations in this paragraph.

17 197. OpenAI admits that GPT-3 is a large language model. OpenAI admits that Codex
18 is a descendant of GPT-3 and that its training data contains both natural language and billions of
19 lines of source code from publicly available sources. OpenAI denies any remaining allegations in
20 this paragraph. OpenAI denies any remaining allegations in this paragraph.

21 198. OpenAI admits that Codex is the model that powers GitHub Copilot, which
22 OpenAI built and launched in partnership with GitHub. OpenAI denies any remaining allegations
23 in this paragraph.

24 199. OpenAI admits that it released DALL-E 2 as a research preview in 2022. OpenAI
25 denies the remaining allegations of this paragraph.

26 200. To the extent the allegations in this paragraph purport to quote from publicly
27 available websites unaffiliated with OpenAI, the full texts of those websites speak for themselves.
28 OpenAI denies any remaining allegations in this paragraph.

L. Conclusion of Factual Allegations

201. Denied.

202. Denied.

203. Denied.

VIII. CLAIMS FOR RELIEF

COUNT 1

VIOLATION OF THE DIGITAL MILLENNIUM COPYRIGHT ACT

17 U.S.C. §§ 1201–1205

(For Injunctive Relief)

(Against All Defendants)

204. OpenAI incorporates by reference its responses to all allegations set forth in paragraphs 1–203 as if fully set forth herein.

205. Denied.

206. Denied.

207. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

208. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

209. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

210. OpenAI denies the allegations in this paragraph to the extent they refer to Codex. The remaining allegations of this paragraph are directed at GitHub and/or Microsoft, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this

1 paragraph about GitHub and/or Microsoft, and on that basis OpenAI denies them. OpenAI denies
2 any remaining allegations in this paragraph.

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

5 212. Denied.

6 213. Denied.

7 214. Denied.

8 215. Denied.

9 216. Denied.

10 217. Denied.

11 218. Denied.

12 219. Denied.

13 220. Denied.

14 221. Denied.

15 222. Denied.

16 223. Denied.

17 224. Denied.

18 225. OpenAI denies the allegations in this paragraph to the extent they refer to OpenAI.
19 The remaining allegations of this paragraph are directed at GitHub and/or Microsoft, and/or
20 OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this
21 paragraph about GitHub and/or Microsoft, and on that basis OpenAI denies them. OpenAI denies
22 any remaining allegations in this paragraph.

23 226. Denied.

24 227. Denied.

25 228. Denied.

26 229. OpenAI denies the allegations in this paragraph to the extent they are directed at
27 OpenAI. The remaining allegations of this paragraph are directed at Microsoft, and/or OpenAI
28 lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about

1 GitHub and/or Microsoft, and on that basis OpenAI denies them. OpenAI denies any remaining
2 allegations in this paragraph.

3 230. OpenAI denies the allegations in this paragraph to the extent they are directed at
4 OpenAI. The remaining allegations of this paragraph are directed at GitHub, and/or OpenAI
5 lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about
6 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
7 paragraph.

8 231. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
9 knowledge or information sufficient to admit or deny the allegations of this paragraph about
10 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
11 paragraph.

12 232. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
13 knowledge or information sufficient to admit or deny the allegations of this paragraph about
14 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
15 paragraph.

16 233. Denied.

17 234. Denied.

18 235. Denied.

19 **COUNT 2**
20 **BREACH OF CONTRACT—OPEN-SOURCE LICENSE VIOLATIONS**
21 **California Common Law**
22 **(Against All Defendants)**

23 236. OpenAI incorporates by reference its responses to all allegations set forth in
24 paragraphs 1–234 as if fully set forth herein.

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

27 238. OpenAI denies the allegations in this paragraph to the extent they are directed at
28 OpenAI. The remaining allegations of this paragraph are directed at GitHub, and/or OpenAI
lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about

1 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
2 paragraph.

3 239. OpenAI denies the allegations in this paragraph to the extent they are directed at
4 OpenAI. The remaining allegations of this paragraph are directed at GitHub, and/or OpenAI
5 lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about
6 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
7 paragraph.

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

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

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

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

16 244. Denied.

17 245. Denied.

18 246. Denied.

19 247. Denied.

20 248. Denied.

21 249. Denied.

22 250. Denied.

23 251. Denied.

24 **COUNT 3**
25 **BREACH OF CONTRACT — SELLING LICENSED MATERIALS**
26 **IN VIOLATION OF GITHUB'S POLICIES**
California Common Law
(Against GitHub)

27 252. OpenAI incorporates by reference its responses to all allegations set forth in
28 paragraphs 1–251 as if fully set forth herein.

1 253. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
2 knowledge or information sufficient to admit or deny the allegations of this paragraph about
3 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
4 paragraph.

5 254. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
6 knowledge or information sufficient to admit or deny the allegations of this paragraph about
7 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
8 paragraph.

9 255. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
10 knowledge or information sufficient to admit or deny the allegations of this paragraph about
11 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
12 paragraph.

13 256. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
14 knowledge or information sufficient to admit or deny the allegations of this paragraph about
15 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
16 paragraph.

17 257. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
18 knowledge or information sufficient to admit or deny the allegations of this paragraph about
19 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
20 paragraph.

21 258. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
22 knowledge or information sufficient to admit or deny the allegations of this paragraph about
23 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
24 paragraph.

25 259. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks
26 knowledge or information sufficient to admit or deny the allegations of this paragraph about
27 GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this
28 paragraph.

260. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

261. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

262. The allegations of this paragraph are directed at GitHub, and/or OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about GitHub, and on that basis OpenAI denies them. OpenAI denies any remaining allegations in this paragraph.

IX. DEMAND FOR JUDGMENT

WHEREFORE, Plaintiffs requests that the Court enter judgment on their behalf and on behalf of the Class defined herein, by adjudging and decreeing that:

263. In response to the Demand for Judgment, OpenAI denies that Plaintiffs are entitled to the requested relief, or to any relief whatsoever.

264. In response to the Demand for Judgment, OpenAI denies that Plaintiffs are entitled to the requested relief, or to any relief whatsoever.

265. In response to the Demand for Judgment, OpenAI denies that Plaintiffs are entitled to the requested relief, or to any relief whatsoever.

266. In response to the Demand for Judgment, OpenAI denies that Plaintiffs are entitled to the requested relief, or to any relief whatsoever.

267. In response to the Demand for Judgment, OpenAI denies that Plaintiffs are entitled to the requested relief, or to any relief whatsoever.

X. JURY TRIAL DEMANDED

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

1 Plaintiffs' claims are properly triable to a jury.

2 **XI. AFFIRMATIVE DEFENSES**

3 In further answer to the allegations made by Plaintiffs in the Second Amended Complaint,
4 OpenAI asserts the following affirmative defenses. OpenAI does not concede that it has the
5 burden of proof on the defenses listed below:

6 **FIRST AFFIRMATIVE DEFENSE**

7 Plaintiffs' and/or putative Class Members' claim for breach of contract is preempted, in
8 whole or in part, by the Copyright Act, 17 U.S.C. § 101 *et seq.*

9 **SECOND AFFIRMATIVE DEFENSE**

10 Plaintiffs' and/or putative Class Members' claim for breach of contract fails, in whole or
11 in part, for failure of performance by Plaintiffs.

12 **THIRD AFFIRMATIVE DEFENSE**

13 Plaintiffs' and/or putative Class Members' claim for breach of contract is barred, in whole
14 or in part, by the doctrine of impracticability.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 Plaintiffs' and/or putative Class Members' claim for breach of contract fails, in whole or
17 in part, for lack or failure of consideration.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 Plaintiffs' and/or putative Class Members' claim for breach of contract fails, in whole or
20 in part, for lack of contract formation.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 Plaintiffs' and/or putative Class Members' claim for breach of contract fails, in whole or
23 in part, for lack of occurrence of a condition precedent.

24 **SEVENTH AFFIRMATIVE DEFENSE**

25 Plaintiffs' and/or putative Class Members' claim for breach of contract fails, in whole or
26 in part, for failure to state a claim.

27 **EIGHTH AFFIRMATIVE DEFENSE**

28 Plaintiffs' and/or putative Class Members' claim for breach of contract fails, in whole or

1 in part, because there is no breach, including without limitation because there was no use of
2 Plaintiffs' code in a fashion requiring copyright permission, including without limitation because
3 the asserted use of Plaintiffs' code constitutes fair use.

4 **NINTH AFFIRMATIVE DEFENSE**

5 Plaintiffs' and/or putative Class Members' claim for breach of contract fails, in whole or
6 in part, because Plaintiffs have suffered no damages.

7 **TENTH AFFIRMATIVE DEFENSE**

8 Plaintiffs' and/or putative Class Members' claim for breach of contract is barred, in whole
9 or in part, by one or more equitable doctrines, such as estoppel, unclean hands, or waiver.

10 **ELEVENTH AFFIRMATIVE DEFENSE**

11 Plaintiffs' and/or putative Class Members' claim for breach of contract fails, in whole or
12 in part, due to Plaintiffs' failure to mitigate damages.

13 **TWELFTH AFFIRMATIVE DEFENSE**

14 To the extent the alleged contract requires misattribution of ownership, the alleged
15 contract is void as against public policy, because it is in contravention of or violates the spirit of,
16 without limitation, Cal. Civ. Code §§ 1643, 1667, 1709, 1710, and/or 17 U.S.C. § 1202(a).

17 **THIRTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiffs' and/or putative Class Members' demand for equitable relief is barred by
19 operation of Cal. Civ. Code § 3390(e).

20 **FOURTEENTH AFFIRMATIVE DEFENSE**

21 Plaintiffs and/or putative Class Members cannot seek equitable relief because they have
22 alleged an adequate remedy at law. Given Plaintiffs' allegations, Plaintiffs and/or putative Class
23 Members cannot seek equitable relief.

24 **FIFTEENTH AFFIRMATIVE DEFENSE**

25 Plaintiffs and/or putative Class Members' claim is barred because Plaintiffs and/or
26 putative Class Members have not suffered any injury from the conduct alleged in the Second
27 Amended Complaint.

28 **SIXTEENTH AFFIRMATIVE DEFENSE**

1 Plaintiffs' claims and the putative class members' claims fail are barred, in whole or in
2 part, by the doctrine of consent.

3 **SEVENTEETH AFFIRMATIVE DEFENSE**

4 Plaintiffs' claims and the putative class members' claims fail, in whole or in part, because
5 the alleged damages, if any, were the result of one or more intervening or superseding causes or
6 caused by the acts and/or omissions of persons other than OpenAI.

1 Dated: July 22, 2024

MORRISON & FOERSTER LLP

2
3 By: /s/ Joseph C. Gratz

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27 MANAGEMENT, LLC, OPENAI, L.L.C.,
OPENAI GLOBAL, LLC, OAI
CORPORATION, OPENAI HOLDINGS,
28 LLC, OPENAI HOLDCO, LLC, OPENAI

STARTUP FUND SPV I, L.P., and OPENAI
STARTUP FUND SPV GP I, L.L.C.

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