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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE OPENAI CHATGPT LITIGATION This document relates to: Case No. 3:23-cv-03416-AMO Case No. 3:23-cv-04625-AMO	Master File No. 23-cv-3223-AMO **NON-PARTY REUTERS NEWS & MEDIA, INC.'S OPPOSITION TO PLAINTIFFS' MOTION FOR RELIEF FROM NON-DISPOSITIVE PRETRIAL ORDER OF MAGISTRATE JUDGE [ECF No. 378]**

Non-Party Reuters News & Media Inc. ("Reuters") hereby opposes Plaintiffs' Motion For Relief From Non-Dispositive Pretrial Order of Magistrate Judge [ECF 378] (the "Motion").

INTRODUCTION

Prior to Plaintiffs' motion to compel being filed, Reuters confirmed to Plaintiffs' counsel that it had no agreements and/or other documents involving the copyrighted materials at issue in the First Consolidated Amended Complaint, or otherwise involving Plaintiffs *whatsoever*. Ignoring these facts, Plaintiffs continued to demand sweeping categories of Reuters' confidential documents and communications – spanning over ten years – on the grounds that any information regarding licensing of "textual data" *might* be somehow relevant to OpenAI's "anticipated" fair use defense or damages. When Reuters refused to produce this information, Plaintiffs moved to compel.

As Judge Illman correctly found in denying Plaintiffs' motion to compel, Plaintiffs are not entitled to "undeniably confidential commercial information (if not trade secrets) from one non-party, Reuters, about its relationship with another non-party" simply because they served a subpoena and deemed the materials "relevant." (ECF 378 at 4.) Rather, Rule 45 required that Plaintiffs make a "concrete, not speculative" showing of "substantial need" for the requested materials. *Id.* Plaintiffs wholly failed to meet this burden and their motion was denied. (*Id.* at 4-5 ("what Plaintiffs have not done is to even mention (let alone convincingly establish) why the essence of this information (*i.e.*, its upshot or import, which is merely information about the existence of a market for licensing copyrighted 'textual data' to train an AI model) cannot be either obtained from OpenAI, or by expert witness testimony, or by any other means that would not involve prying into the confidential commercial information of two non-parties").) Hence, there was no "clear error" by Judge Illman, Plaintiffs simply disagree with the outcome.

For these, and the reasons discussed below, Plaintiffs' disagreement with Judge Illman's findings does not warrant relief under Rule 72 and their Motion should be denied.

LEGAL STANDARD

A magistrate judge's non-dispositive pretrial order may only be reversed if it "is clearly erroneous or is contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). "The standard for review of magistrate judge's non-dispositive ruling under Federal Rule of Civil Procedure 72(a) is

highly deferential." *Magana-Munoz v. W. Coast Berry Farms, LLC*, No. 5:20-CV-02087-EJD, 2022 WL 6584545, at *2 (N.D. Cal. Sept. 29, 2022). "The reviewing court may not simply substitute its judgment for that of the deciding court," it must review the order for clear error. *Grimes v. City & Cnty. of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991). "There is clear error only when the court is 'left with the definite and firm conviction that a mistake has been committed.'" *Zepeda v. Paypal, Inc.*, 2014 WL 4354386, at *3 (N.D. Cal. Sept. 2, 2014) (quoting *Easley v. Cromartie*, 532 U.S. 234, 242 (2001)).

ARGUMENT

A. Plaintiffs' Rejections of Reuters' Efforts To Compromise Do Not Support Reversal

As an initial matter, Plaintiffs misconstrue the scope of the dispute before Judge Illman by asserting that Reuters "agreed" to produce certain materials and Plaintiffs' motion to compel thus involved only "additional material" sought by their Subpoena. (ECF 405 at 2.) This is untrue. Reuters, through counsel, did seek to resolve its well-founded objections to the burdensome requests in the Subpoena in an effort to avoid incurring the costs of motion practice. (*See* ECF 348-1, ¶¶4-5.) Plaintiffs' counsel rejected these efforts out of hand and no agreement was ever reached by the parties. Nevertheless, Plaintiffs claim that "Judge Illman *ignored the parties' agreement* and denied the Motion in its entirety [. . .] rather than simply denying the Motion as to the additional material Plaintiffs sought." (ECF 405 at 2 (emphasis added).) But even setting aside Plaintiffs' mischaracterization of an "agreement", they have not shown "clear error" as Judge Illman *did* expressly consider Plaintiffs' rejection of Reuters' offer in ruling on their motion. (*See* ECF 378 at p. 3 (discussing Reuters' "offered compromise").) Put simply, Plaintiffs' refusal to compromise before a ruling was reached does not support reversal of the Order and Reuters should not now be penalized for attempting to negotiate a resolution (without waiver of its objections).

B. Judge Illman Correctly Found That Plaintiffs Did Not Establish "Substantial Need" For The Requested Materials

Plaintiffs further continue to ignore that "[t]he 'mere relevance standard [ ] does not apply to nonparties'" and that "[a] party seeking to obtain discovery from a nonparty 'must demonstrate that its need for discovery outweighs the nonparty's interest in nondisclosure.'" *Vena v. Moore,*

Schulman & Moore, APC, No. 22CV437-W(BLM), 2023 WL 6194315, at *3 (S.D. Cal. Mar. 24, 2023). Rather, in seeking Reuters' confidential and trade secret material, Plaintiffs were required to establish a "substantial need for the [. . .] material that cannot be otherwise met without undue hardship." Fed. R. Civ. Proc. 45(c)(3)(B).

As Judge Illman's order correctly reflects, "[t]he determination of substantial need is particularly important in the context of enforcing a subpoena when discovery of trade secret or confidential commercial information is sought from non-parties." *See Gonzales v. Google, Inc.*, 234 F.R.D. 674, 685 (N.D. Cal. 2006) (citing *Mattel Inc. v. Walking Mt. Prods.*, 353 F.3d 792, 814 (9th Cir. 2003)). Thus, Plaintiffs were required to make a "concrete, not speculative" showing of "substantial need" for the requested materials. (ECF 378 at 4-5.)

Here, as they did in their motion to compel, Plaintiffs broadly assert that Reuters' documents "are highly relevant to establishing the market for *text data* for use as LLM training data." (ECF 405 at 4 (emphasis added).) However, as Judge Illman recognized, "[b]y using the broad phrase, 'textual data,' Plaintiffs gloss over the difference between the news content which is the subject of the Reuters/Meta agreement, and the non-news content that is the subject of this case." (ECF 378 at n.2.)[1]

To be clear: Reuters does not have any responsive documents related to Plaintiffs and/or the specific copyrighted materials at issue in this case. Nevertheless, Plaintiffs continue to maintain that they are entitled to Reuters' confidential and trade secret materials to establish the "broader market for text training data." (ECF No. 405 at 6.) But, as Judge Illman properly concluded, the fact that a *non-party* (like Reuters) might enter into a licensing agreement with *another non-party* involving copyrighted materials held by *other non-parties* has "marginal relevance" – if any – to this dispute. (ECF No. 378 at 4-5.) And, in the context of Rule 45, Plaintiffs still "have not explained why prying into Reuters' commercial relationship with Meta is the only way to 'establish the existence of

[1] The fact that no class has been certified in this litigation is of no moment to Plaintiffs, who continue to point to the definition of the class in their First Consolidated Amended Complaint. (ECF 314 at 6; ECF 405 at 3.) This seemingly boundless class of claimants certainly would themselves be a better source for information on the market valuation Plaintiffs claim to be seeking here than non-party Reuters.

a market for copyrighted work as training data for LLMs . . . [such as to] provide evidence of benchmark licensing agreements and market demand . . . [so that Plaintiffs can] calculat[e] actual damages and recovery of lost profits.'" (ECF No. 378 at 4-5 (quoting Plaintiffs' motion to compel).)[2]

Moreover, none of the authority cited by Plaintiffs demonstrates a "substantial need" for Reuters' trade secret and confidential materials. To the contrary, the authority Plaintiffs cite confirms that copyright actual damages and fair use market considerations can be determined without "benchmark" valuations from unrelated third parties. For example, in *Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc.*, the Ninth Circuit found that market harm could be inferred because the use was non-transformative and admittedly commercial and affirmed the lack of fair use without regard to any benchmark valuations or agreements. 109 F.3d 1394, 1403 (9th Cir. 1997). Thus, as Judge Illman correctly found, "Plaintiffs have not demonstrated a ***substantial need*** for the discovery they seek" and their Motion should be denied. (ECF No. 378 at 5 (emphasis added).)

CONCLUSION

For the foregoing reasons, Non-Party Reuters requests that the Court deny Plaintiffs' Motion in its entirety.

Dated: April 2, 2025

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[2] Notably, as Judge Illman seemingly recognized, Plaintiffs' expansive definition of a "market for high-quality text data used to train LLMs" purports to make every text-related licensing agreement *in existence* "relevant" to their claims without regard for *inter alia* the parties involved, nature and/or types of underlying copyrighted materials at issue, geographic scope, particular LLM at issue, or the relationships between the contracting parties and the copyright holders.