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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

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13 *In Re Mosaic LLM Litigation*

Master File Case No. 3:24-cv-01451-CRB
Consolidated with Case No. 3:24-cv-02653-CRB

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15 **STIPULATION & ~~PROPOSED~~ ORDER RE:**
16 **EXPERT DISCOVERY**

17 Judge: Hon. Charles R. Breyer
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1 The parties stipulate to the following regarding the scope of expert discovery relating to all
2 testifying experts and non-testifying experts or expert consultants in this matter.

3 1. Except as provided otherwise in this Stipulation, expert discovery is governed by the
4 Federal Rules of Civil Procedure and any other applicable rule. This Stipulation does not set or
5 alter the time for any disclosure required by Federal Rule of Civil Procedure 26(a)(2)(B) or the
6 timing of any deposition of any testifying expert.

7 2. To the extent that this Stipulation imposes limitations on discovery that would
8 otherwise be available under the Federal Rules of Civil Procedure, the parties have agreed to those
9 limitations to increase the efficiency of their dealings with testifying experts and to minimize
10 discovery disputes regarding testifying experts. Neither the terms of this Stipulation nor the parties'
11 agreement to them is an admission by any person that any of the information restricted from
12 discovery by this Stipulation would otherwise be discoverable or admissible.

13 3. Except as provided in paragraphs 5 and 6 below, the following types of information
14 will not be the subject of any form of discovery, and the parties are not obligated to preserve such
15 information in any form or include such information on any privilege log:

- 16 a. the content of oral, written, or other communications among and between
17 testifying experts, non-testifying expert consultants, their staff and/or
18 supporting firms, outside counsel, and in-house counsel. For example:
 - 19 i. outside or in-house counsel and a testifying expert and/or the expert's
20 staff and/or supporting firms;
 - 21 ii. outside or in-house counsel and any non-testifying expert consultant
22 and/or the consultant's staff and/or supporting firms;
 - 23 iii. a testifying expert and other experts and/or other non-testifying expert
24 consultants;
 - 25 iv. a testifying expert and their staff and/or supporting firms;
 - 26 v. non-testifying expert consultants and their staffs and/or supporting
27 firms;

- 1 vi. a testifying expert and the respective staffs and/or supporting firms of
- 2 other experts or non-testifying expert consultants;
- 3 vii. non-testifying expert consultants and the respective staffs and/or
- 4 supporting firms of other experts or non-testifying expert
- 5 consultants; and/or
- 6 viii. the respective staffs and/or supporting firms of experts or non-
- 7 testifying expert consultants and the staffs and/or supporting firms of
- 8 other experts or non-testifying expert consultants.

9 b. notes, drafts, written communications, preliminary or intermediate
10 calculations, computations, or other types of preliminary work created by,
11 for, or at the direction of a testifying expert in connection with this matter
12 (aside from the final written expert report(s) and notes generated while
13 testifying), including copies of documents produced by any party bearing the
14 notes, markings, or comments of any of the following persons or their staff
15 or agents: the expert, other expert witnesses, non-testifying experts,
16 consultants, or outside or in-house attorneys for the party or parties.

17 c. For the avoidance of doubt, suggestions from outside counsel regarding revisions
18 to the form of the expert's report, or additional support for the expert's ultimate
19 opinions are examples of the kind of communications that, under paragraph 3,
20 are not subject to discovery.

21 4. Except as provided in paragraphs 5 and 6 below, no party or their experts are
22 obligated to preserve or produce budgets, invoices, bills, receipts, or time records concerning the
23 work performed by testifying or non-testifying experts or consultants, their staff, assistants,
24 colleagues, associates, or other agents, or their companies or organizations, relating to the report,
25 testimony, or services provided in this matter.

26 5. The limitations contained in paragraphs 3 and 4 above do not apply to any
27 communications, documents, calculations, computations, or other forms of information or work
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1 upon which a testifying expert relies as a basis for any of his or her opinions or reports. To the
2 extent a testifying expert relies on an assumption provided by outside or in-house counsel, the
3 assumption and its source—but not the communication(s) between outside or in-house counsel and
4 the testifying expert concerning that assumption—must be disclosed.

5 6. Notwithstanding the limitations contained in paragraphs 3 and 4 above, a testifying
6 expert may be asked to respond to reasonable questions regarding the hourly rates of the expert and
7 his or her staff, the amount of time an expert or that expert’s staff has spent on the expert’s report
8 and associated work, and the amount of money billed for the report and associated work.

9 7. Within three (3) business days of any party serving any expert report and/or expert
10 declaration pursuant to Federal Rule of Civil Procedure 26(a)(2)(B) or otherwise, the party or parties
11 proffering the expert witness must produce: the documents, data, or other information (including,
12 but not limited to, analyses, spreadsheets, graphs, and charts) relied upon by the expert witness in
13 forming the expert witness’s opinions and any exhibits that will be used to summarize or support
14 the expert witness’s opinions. All other disclosures required by Federal Rule of Civil Procedure
15 26(a)(2)(B) (subject to the modifications made by this Stipulation) will be served at the time of the
16 report. “Documents, data, or other information relied upon” includes underlying schedules,
17 spreadsheets, coding, or other information sufficient to reconstruct the work, calculations, and/or
18 analyses upon which the expert witness is relying for his or her opinions. Notwithstanding the
19 obligation to disclose documents, data, or other information “relied on” by the expert witness,
20 documents, data, or other information that are merely “considered by” the expert witness do not
21 need to be disclosed.

22 8. The information required by paragraph 7 above must be produced electronically (via
23 email, disc, or FTP site) where feasible. Data, statistical analyses, or other materials (including any
24 calculation or exhibit) in machine readable format upon which an expert relies for any of his or her
25 opinion(s) in this matter must be provided in machine readable format. All other documents, data,
26 and other information relied upon must be provided in a format as agreed to by the parties. If the
27 data referred to above can be read or processed only with software available to the producing party,
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1 and the producing party is permitted to share that software, then the producing party must produce
2 the software. Documents that are publicly available do not need to be produced if they are available
3 online for free at an internet address identified in the expert's report/declaration. Documents that
4 have previously been produced during discovery do not need to be produced if they are identified
5 by Bates number.

6 9. Nothing in this Stipulation is intended to limit the ability of any party to prepare and
7 use demonstrative exhibits, including demonstrative exhibits that may relate to an expert's
8 testimony, during the course of any argument, hearing, or trial. The admissibility of any such
9 demonstrative exhibits will be subject to the Federal Rules of Evidence and the Federal Rules of
10 Civil Procedure unless otherwise provided by order of the Court.

11 10. No subpoenas (for depositions or documents) need to be served on any testifying
12 expert from whom a report or declaration is provided. Instead, the party proffering such expert will
13 (a) be responsible for producing all materials and information required by the Federal Rules of Civil
14 Procedure or this Stipulation, and (b) make the expert available for deposition at a time mutually
15 agreed to by the parties and consistent with the Court's scheduling orders. To the extent the
16 testifying expert is also a percipient witness, if otherwise permissible under the Federal Rules of
17 Civil Procedure and the Local Rules, the opposing party is not precluded from serving a subpoena
18 for depositions or documents on such witness seeking the witness's percipient testimony or
19 documents.

20 11. Nothing in this Stipulation permits a party or a testifying expert to withhold any
21 proposition, fact, belief or other data, information, or material (including any assumption and its
22 source) on which the expert relies in support of her or his opinion(s) in this matter or that is otherwise
23 discoverable by order of the Court.

24 12. The parties agree to comply with this Stipulation pending the Court's approval.

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26 **IT IS SO STIPULATED.**

27 [Signature Pages Follow]

1 Dated: February 28, 2025

Respectfully submitted,

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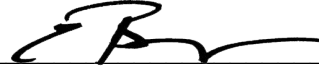
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~~PROPOSED~~ ORDER

PURSUANT TO THE STIPULATION, IT IS SO ORDERED.

Dated: March 3, 2025, 2025



Hon. Charles R. Breyer
United States District Court Judge

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