

June 2, 2025

VIA EMAIL

The Honorable Lisa J. Cisneros
United States Magistrate Judge
San Francisco Courthouse
Courtroom G - 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Andersen et al. v. Stability AI Ltd., et al.*, 3:23-cv-00201-WHO (LJC)

Dear Magistrate Judge Cisneros:

Pursuant to the Court’s May 28, 2025 Order, Plaintiffs submit this supplemental brief to address Defendants’ assertion that Plaintiffs already identified a “non-conflicted alternative” expert to Dr. Ben Zhao and therefore will not be severely prejudiced by his disqualification. ECF No. 301. That assertion is false. To date, Plaintiffs have only disclosed two experts in this case: (1) Dr. Ben Zhao and (2) Mr. Ayyub Ibrahim. Declaration of Joshua M. Stein [“Stein Dec.”] at ¶ 2. Dr. Zhao is an expert on AI image generation. Mr. Ibrahim is an expert on data analysis. Neither is an “alternative” for the other, and Defendants know that. Consequently, Plaintiffs would be severely prejudiced by Dr. Zhao’s disqualification—he possesses “unique qualifications” in AI image generation that render him “better suited than any other expert” to serve. *GPNE Corp. v. Apple Inc.*, 12-cv-02885, 2014 WL 1027948, at *3-4 (N.D. Cal. Mar. 13, 2014).

I. Defendants’ Assertion That Mr. Ibrahim Is an “Alternative” To Dr. Zhao Is False.

Defendants argue that the disqualification of Dr. Zhao will not prejudice Plaintiffs because Plaintiffs also disclosed another expert, Mr. Ibrahim. ECF No. 300 at 6.¹ This argument either fundamentally misunderstands or intentionally misstates the nature of the qualifications of the two experts that Plaintiffs have disclosed to date and their intended roles in this case.

Mr. Ibrahim is an expert in *data analysis*, not AI image generation. He is currently employed as an AI Engineer at the University of California, Berkeley Institute for Data Science, where he is “[b]uilding end-to-end *data extraction* pipelines.” Stein Dec., Ex. A (emphasis added). According to his staff profile on his university website, Mr. Ibrahim is a self-described “*data scientist*” who “uses AI and machine learning to process *unstructured data*.” Stein Dec., Ex. B (emphasis added). He also currently serves as a “*Data Science Consultant*” at the “Human Rights *Data Analysis* Group.” Stein Dec., Ex. A (emphasis added). And he is the co-founder of the Machine Learning Justice Lab, whose mission is to provide tools that can “assist in the analysis and understanding of legal *documents and data*.” Stein Dec., Ex. C at 2 (emphasis added).

¹ Defendants do not identify the purported “non-conflicted alternative” expert by name, but since the only other expert Plaintiffs disclosed is Mr. Ibrahim, Plaintiffs assume it must be to him they refer.

Dr. Zhao, by contrast, is an expert in *AI image generation*, not data analysis. His five most recently published articles focus on topics related to (1) mislabeling in “*Text-to-Image AI Models*,” (2) “Protecting Content Creators from AI Crawlers,” (3) “Implosion in *Text-to-Image Generative Models*,” (4) “Distinguish[ing] Human Art from *AI-generated Images*,” and (5) “Attacks on *Text-to-Image Generative Models*.” Stein Dec., Ex. D at 4-5 (emphasis added). In 2024, he was awarded the “Distinguished Paper Award” at the ACM Conference on Computer and Communications Security for a paper on “*Generative AI Image detection*.” *Id.* at (emphasis added). And as Defendants emphasized in their own briefing, Dr. Zhao’s “very research is focused on understanding ... *image model* performance.” ECF No. 300 at 5 (emphasis added).

A more systematic review of Dr. Zhao’s and Mr. Ibrahim’s respective résumés, both of which Plaintiffs disclosed to Defendants over a month ago, confirms each has different qualifications and will serve a different role in this case:

	Dr. Zhao (Ex. D)	Mr. Ibrahim (Ex. A)
Education	Ph.D. in Computer Science; M.S. in Computer Science; B.S. in Computer Science	B.A. in Urban Studies
Publications related to AI image generation?	Yes	None
Awards related to AI image generation?	Yes	None
Employment related to AI image generation?	Yes	None
Membership in professional organizations related to AI image generation?	Yes	None

While Mr. Ibrahim is a talented researcher in his own area of expertise, he obviously is not an “alternative” for Dr. Zhao. Unlike Dr. Zhao, Mr. Ibrahim has no specific expertise in AI image generation—only in data analysis and non-image AI technologies like text-based large language models.

Defendants’ characterization of Mr. Ibrahim as a qualified substitute for Dr. Zhao thus plainly misstates both his background and the nature of Plaintiffs’ claims. Plaintiffs’ allegations focus on how specific visual outputs mirror copyrighted training images and whether technical safeguards were (or could have been) implemented. Addressing these issues requires detailed technical understanding of image model architecture and behavior—not just general data analysis or language model behavior. Mr. Ibrahim cannot provide the analysis Dr. Zhao is prepared to offer.

II. Dr. Zhao Possesses Unique, Case-Critical Expertise in Generative AI Image Models.

Dr. Zhao is not only *not* an alternative for Mr. Ibrahim—he also possesses “unique qualifications” in AI image generation that render him “better suited than any other expert” who could possibly be qualified to serve as one in this case. *GPNE Corp. v. Apple Inc.* at *3-4.

Dr. Zhao is one of the preeminent researchers in his field. He has published over 190 refereed papers, which have collectively garnered approximately 38,000 citations. Stein Dec., Ex. D at 2. He has received over 25 awards for his work, including being named as one of Time’s 100 most

influential people in AI in 2024. *Id.* at 2-3. And he is a tenured, named professor of computer science at the University of Chicago and co-director of its Systems, Algorithms, Networking, and Data (SAND) Lab. *Id.* at 2.

At his lab, Dr. Zhao’s research focuses on exactly the technical issues that lie at the center of this case. Dr. Zhao is an expert on the mechanics of image diffusion models and has specifically studied memorization and data leakage in such models. His published research includes analysis of image-generating systems trained on large-scale web-scraped data, assessing how and when they regurgitate training examples. *See generally id.* at 4-18. That body of work goes directly to the core issues in this litigation: how generative image models behave, how they replicate or transform copyrighted works, and how those processes can be measured or mitigated. Dr. Zhao has also worked on tools for auditing AI systems, including red-teaming methodologies, dataset inspection, and analysis of model behavior—all of which are crucial to assessing the factual predicates for liability and defenses in this case. *Id.* And just this spring, he created and taught a course, “one of the first for undergraduates in the country,” on these topics. Stein Dec., Ex. E.

Recognizing his unique expertise in these areas, several other litigants have also named Dr. Zhao as an expert in other high-profile AI copyright cases involving generative AI models, including *Bartz v. Anthropic PBC*, No. 24-cv-05417 (N.D. Cal.) and *Authors Guild v. OpenAI*, 23-cv-8292 (S.D.N.Y.) without issue. The Court should allow Plaintiffs to do the same here.

III. Plaintiffs Will Be Severely Prejudiced If This Court Disqualifies Dr. Zhao.

Disqualifying Dr. Zhao would deny Plaintiffs access to the one expert best positioned to help the Court and the jury in understanding how generative image models memorize, output, and infringe copyrighted works. This is not a matter of convenience or preference: major technology companies have hired many leading researchers in this field, leaving few independent experts of Dr. Zhao’s caliber. The pool of qualified experts in AI image generation who are not employed by direct competitors of Defendants is increasingly small, making Dr. Zhao’s expertise in this case virtually irreplaceable.

Disqualifying Dr. Zhao also will prejudice Plaintiffs’ ability to contest Defendants’ arguments that their unauthorized use of Plaintiffs’ copyrighted images should be excused under the doctrine of fair use. But Dr. Zhao will explain how Defendants’ models’ outputs are driven by their inputs and how the models rely on their training data. While Mr. Ibrahim can examine the models’ training data and testify about copyright infringement in the first instance (i.e., Defendants’ initial copying of Plaintiffs’ images), only Dr. Zhao is prepared to examine *the models themselves* and testify about copyright infringement when the models are actually used (i.e., when the models regurgitate Plaintiffs’ copyrighted images).

IV. Conclusion

Dr. Zhao is not merely one among several qualified experts—he is uniquely positioned to help the Court and the jury understand the technical foundations of Plaintiffs’ claims. Defendants’ assertion that Mr. Ibrahim is a viable substitute is belied by even a cursory review of the two experts’ résumés, both of which have been in Defendants’ possession for over a month. Stein Dec. at ¶ 2. Plaintiffs respectfully request that Dr. Zhao be permitted to remain as their expert.

Dated: June 2, 2025

By: /s/ Joshua Michelangelo Stein

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