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December 23, 2025

Via ECF

Hon. Sidney H. Stein
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: ***Request for Leave to File Reply in Support of Rule 72 Objection to Magistrate Judge Wang's Order at ECF 846, In re OpenAI, Inc., Copyright Infringement Litigation***, No. 1:25-md-03143

Dear Judge Stein:

OpenAI respectfully requests leave to file the attached reply brief in support of its Rule 72 objections to Magistrate Judge Wang's November 24, 2025 Opinion and Order (ECF 846). District Courts have discretion to consider a reply brief submitted in support of Rule 72(a) objections. *See, e.g., Chelsea Hotel Owner LLC v. City of New York*, 2025 WL 880530, at *1 n.1 (S.D.N.Y. Mar. 21, 2025). And a reply is warranted here for three reasons.

First, a reply would permit OpenAI to address new record evidence. This discovery dispute concerns the question whether OpenAI waived attorney-client privilege over its reasons for deleting two datasets, Books1 and Books2, that OpenAI briefly used to train its GPT models. After OpenAI stopped using the datasets to train new GPT models in 2021, OpenAI decided to delete the datasets in consultation with in-house counsel. Until now, that timeline has been uncontested. But class plaintiffs' opposition brief asserts for the first time that OpenAI was still using the Books1 and Books2 datasets to train new GPT models in 2022. ECF 995 ("Opp.") 12. In support of that assertion, class plaintiffs submit six exhibits that they did not present to Magistrate Judge Wang. Opp. Ex 1–6. OpenAI disagrees that the exhibits show OpenAI continued to use the datasets in training new GPT models in 2022. The proposed reply brief presents OpenAI's interpretation of the record and ensures that the Court has a complete picture.

Second, a reply would let OpenAI address whether the crime-fraud exception to attorney-client privilege applies. In addition to opposing OpenAI's objections to Magistrate Judge Wang's Order, class plaintiffs lodge an objection of their own. Class plaintiffs now contend that Judge Wang erred by declining to permit them access to OpenAI's privileged reasons for deleting the

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datasets under the crime-fraud exception. Opp. 26–27. OpenAI’s proposed reply brief explains why that assertion is mistaken.

Third, a reply would let OpenAI counter class plaintiffs’ claim that OpenAI waived various arguments by failing to present them to Magistrate Judge Wang. Opp. 2–3, 10, 15, 20. As OpenAI’s proposed reply explains, parties are *required* to challenge a magistrate judge’s reasoning when objecting to an order—and that is all OpenAI did in its initial memorandum of law.

Respectfully submitted,

/s/ Lisa S. Blatt

cc: Counsel of Record via ECF