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

12
13 *In Re Mosaic LLM Litigation*

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

14
15 **PLAINTIFFS' NOTICE OF MOTION AND**
16 **MOTION TO MODIFY SCHEDULING**
17 **ORDER AND FOR LEAVE TO FILE**
18 **SECOND AMENDED CONSOLIDATED**
19 **COMPLAINT**

Judge: Hon. Charles R. Breyer

Date: January 16, 2026

Time: 10:00 a.m.

Location: Video Conference (Zoom)

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NOTICE OF MOTION AND MOTION TO MODIFY SCHEDULING ORDER

AND FOR LEAVE TO FILE SECOND AMENDED CONSOLIDATED COMPLAINT

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Please take notice that on January 16, 2026, upon the accompanying Memorandum of Law, the undersigned hereby moves this Court on behalf of Plaintiffs Stewart O’Nan, Abdi Nazemian, Brian Keene, Rebecca Makkai, and Jason Reynolds (“Plaintiffs”), before the Honorable Charles R. Breyer in Courtroom 6 of the United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, for an order pursuant to Federal Rules of Civil Procedure 15 and 16, to modify the scheduling order and grant Plaintiffs leave to file their Second Amended Consolidated Complaint (“SACC”).

Plaintiffs seek an order granting their Motion for Leave to File a Second Amended Consolidated Complaint and to modify the scheduling order based on evidence recently disclosed. The proposed SACC would (1) add a direct infringement claim against Defendant Databricks based on its use of Plaintiffs’ works to develop its LLMs; (2) add a contributory infringement claim against Defendants Databricks and MosaicML based on their [REDACTED]; (3) add an inducement of infringement claim against Defendants Databricks and MosaicML for [REDACTED]; and (4) update the proposed class definition to reflect Defendants’ newly discovered conduct.

Plaintiffs’ Motion is based on this Notice of Motion and Motion, an accompanying Memorandum of Points and Authorities, all pleadings and papers in this action, and any oral argument of counsel.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs seek leave to amend their First Amended Consolidated Complaint to align the pleadings
3 with recently discovered facts that provide the bases to add Defendant Databricks, Inc. (“Databricks”) to
4 the direct infringement claim, and to add contributory infringement and inducement claims against both
5 Defendants. Plaintiffs move to amend the Complaint with good cause based on recent discovery, and
6 their proposed amendment is timely, in good faith, not futile, and causes no prejudice as the amendments
7 do not meaningfully expand the existing scope of the case. The Court should grant Plaintiffs’ Motion
8 because each of the *Foman* factors weighs strongly in favor of leave to amend.

9 **I. LEGAL STANDARD**

10 “Once the district court ha[s] filed a pretrial scheduling order pursuant to Federal Rule of Civil
11 Procedure 16 which establishe[s] a timetable for amending pleadings that rule’s standards control[].”
12 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607–08 (9th Cir. 1992). Rule 16(b) requires a
13 showing of “good cause” to modify the scheduling order. Fed. R. Civ. P. 16(b)(4). And when a party
14 moves to amend the pleadings after the scheduling order has been issued, it must show good cause for
15 amendment. *Johnson*, 975 F.2d at 608–09. The good cause inquiry under Rule 16(b) “primarily considers
16 the diligence of the party seeking the amendment” and “the moving party’s reasons for seeking
17 modification.” *Id.* at 609. Only after a court is satisfied that there is good cause under Rule 16(b) does it
18 assess whether amendment is proper under Rule 15. *See id.* at 608; *Skillz Platform Inc. v. AviaGames*
19 *Inc.*, No. 21-cv-02436-BLF, 2023 WL 7308385, at *1 (N.D. Cal. Nov. 6, 2023).

20 Under Federal Rule of Civil Procedure 15(a)(2), courts “should freely give leave” to amend
21 pleadings “when justice so requires.” This standard is “applied with extreme liberality.” *Eminence Cap.,*
22 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citation omitted). “[T]he party opposing
23 amendment bears the burden of showing prejudice.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187
24 (9th Cir. 1987). In considering motions for leave to amend, courts consider five factors: (1) undue delay,
25 (2) bad faith or dilatory motive by the movant, (3) “repeated failure to cure deficiencies by amendments
26 previously,” (4) “undue prejudice to the opposing party,” and (5) futility of amendment. *Foman v. Davis*,
27 371 U.S. 178, 182 (1962). “Absent prejudice, or a strong showing of any of the remaining *Foman* factors,
28 there exists a presumption under Rule 15(a) in favor of granting leave to amend.” *Eminence Cap.*, 316

1 E.3d at 1052. The party opposing amendment bears the burden of showing why leave to amend should
2 not be granted. *See id.*

3 **II. BACKGROUND**

4 Plaintiffs filed their First Amended Consolidated Complaint on June 27, 2025, adding a direct
5 infringement claim against Databricks based “on information and belief” that Databricks had used
6 training data including Plaintiffs’ Asserted Works in the training and development of its DBRX models.
7 Dkt. 131 at 8-9. On August 19, 2025, the Court granted Databricks’ motion to dismiss this direct
8 infringement claim on the grounds that Plaintiffs’ allegations regarding the DBRX models’ datasets were
9 too generalized to state a claim for copyright infringement. Dkt. 162 at 3. The Court concluded: “If
10 discovery into the surviving claims reveals information that would permit [Plaintiffs] to allege facts—not
11 conclusions—as to Databricks’ liability for direct infringement, Plaintiffs may move for leave to further
12 amend their complaint.” *Id.* at 5.

13 Plaintiffs have been diligently pursuing discovery to develop the factual record. Specifically,
14 Plaintiffs sought information on Defendants’ MPT and DBRX series of large language models (“LLMs”)
15 and their use of pirated datasets containing Plaintiffs’ copyrighted works. Defendants have been
16 producing documents on a rolling basis, including substantial productions in July, August, September,
17 and October 2025 and ongoing smaller productions in November. Plaintiffs began taking depositions as
18 soon as Defendants could certify that all of the witnesses’ respective custodial documents had been
19 produced, with the first deposition on October 10 and eight depositions completed thus far, including two
20 deponents designated as corporate witnesses under Rule 30(b)(6).

21 Recent deposition testimony and documents produced after Plaintiffs filed their First Amended
22 Consolidated Complaint reveal that Databricks directly infringed Plaintiffs’ works by [REDACTED]

23 [REDACTED]
24 [REDACTED]. Further, recently produced documents and testimony evidence
25 that MosaicML and Databricks [REDACTED]

26 [REDACTED]
27 [REDACTED]. Accordingly, Plaintiffs seek leave to amend and expand their claims to address this information.
28 [REDACTED]

1 Plaintiffs seek leave to amend the Complaint in four areas: (1) adding a direct infringement claim
2 against Databricks and alleging additional instances of infringement by MosaicML; (2) adding a claim
3 against both Defendants for contributory infringement based on their [REDACTED]
4 [REDACTED] (3) adding an inducement of
5 infringement claim against both Defendants for [REDACTED]
6 [REDACTED]; and (4) updating
7 the proposed class definition to reflect Defendants’ newly identified conduct.

8 On November 12, 2025, Plaintiffs sought and Defendants refused to consent to filing the SACC.

9 **III. ARGUMENT**

10 The Court should grant leave to amend because (1) Plaintiffs have good cause to extend the
11 deadline to amend under Rule 16 based on their diligence in pursuing discovery and their diligence in
12 seeking leave to amend the Complaint and (2) each of the *Foman* factors weigh in favor of leave to
13 amend.

14 **A. Plaintiffs Have Good Cause Under Rule 16 Based on Recent Discovery.**

15 “In evaluating diligence for the purposes of Rule 16(b), . . . courts generally consider both when
16 the relevant facts were learned *and* whether the moving party was diligent in seeking discovery of those
17 facts.” *Entangled Media, LLC v. Dropbox Inc.*, 348 F.R.D. 649, 654 (N.D. Cal. 2025). “Waiting to file the
18 motion until after obtaining corroborating deposition testimony is [] sufficient to meet the good cause
19 requirement of Federal Rule of Civil Procedure 16(b).” *Id.* at 655 (citation omitted); *see also Pizana v.*
20 *SanMedica Int’l LLC*, 345 F.R.D. 469, 480–81 (E.D. Cal. 2022) (“it was not dilatory or unreasonable for
21 plaintiff to wait to seek leave for such an amendment until after completing the remaining Rule 30(b)(6)
22 depositions.”) (collecting cases). Plaintiffs satisfy these standards. They have been diligent in seeking
23 discovery of the relevant facts, and are moving to amend promptly based on recently produced
24 documents and deposition testimony corroborating what those documents show about Defendants’
25 infringing conduct.

26 **1. Databricks Directly Infringed Plaintiffs’ Copyrighted Works**

27 Defendants’ documents directly support a renewed direct copyright infringement claim against
28 Databricks. Specifically, evidence supporting Plaintiffs’ proposed amendments include documents that

1 show (1) Databricks [REDACTED]
2 [REDACTED] after its acquisition of
3 MosaicML, and (2) Databricks [REDACTED]
4 [REDACTED].

5 As to (1), the documentary evidence is substantial. For instance:

- 6 • After the removal of the Books3 dataset from Hugging Face around October 2023 (three
7 months after Databricks’ acquisition of MosaicML),¹ Databricks employees [REDACTED]
8 [REDACTED]. Declaration of William W.
9 Castillo Guardado (“Castillo Guardado Decl.”) at Ex. D (MOSAIC_ONAN_00012256)
10 (produced July 15, 2025).
- 11 • In August 2023, the month after Databricks acquired MosaicML, Databricks employees
12 discussed that they “[REDACTED]
13 [REDACTED] *Id.*
14 at Ex. Q (MOSAIC_ONAN_00001072). [REDACTED]
15 [REDACTED]. *Id.* at Ex. U (Frankle 30(b)(6) Rough Dep. Tr. at 137:5-8) (“[REDACTED]
16 [REDACTED]”). Databricks’ Chief AI Scientist Jonathan Frankle
17 explained in his November 13, 2025 30(b)(6) deposition: “[REDACTED]
18 [REDACTED].” *Id.* at Ex. U
19 (Frankle 30(b)(6) Rough Dep. Tr. at 185:14-186:7).
- 20 • In December 2023, a Databricks employee [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] *Id.* at Ex. E (MOSAIC_ONAN_00022529) (produced August 13, 2025).
- 24 • Frankle wrote on March 10, 2024—only days after the filing of this lawsuit—that [REDACTED]
25 [REDACTED] *Id.* at Ex. G
26 (MOSAIC_ONAN_00048989) (produced October 8, 2025).

27
28 ¹ See *The Pile: “Books3” Subset Dataset*, Hugging Face (archived Nov. 27, 2023),
https://web.archive.org/web/20231127101818/https://huggingface.co/datasets/the_pile_books3.

- 1 • In his November 13 deposition, Frankle confirmed that the [REDACTED]
2 [REDACTED]. *Id.* at
3 Ex. U (Frankle 30(b)(6) Rough Dep. Tr. at 191:16-21); *see also* Frankle at 253:11-15 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]).
- 7 • During the October 29, 2025 deposition of former CEO of MosaicML and VP of AI at
8 Databricks, Naveen Rao testified that Databricks [REDACTED]
9 [REDACTED]
10 [REDACTED] *Id.* at Ex. R (Rao Dep. Tr. 142:24-144:13). This evidence directly supports the
11 allegations of direct copyright infringement the Court found wanting in its Order dismissing
12 the direct infringement claim alleged against Databricks, Dkt. 162, namely, that Databricks
13 [REDACTED]. *See id.* at Ex. S (Cody Blakeney Dep. Tr. at
14 451:13–452:4) (Databricks [REDACTED]
15 [REDACTED]).

16 Databricks did not just [REDACTED]. It also exploited these datasets to
17 [REDACTED]. Specifically, Databricks [REDACTED]
18 [REDACTED]
19 MosaicML Platform, a service that allows anyone to train LLMs.² The MosaicML Platform is marketed
20 as enabling users to train LLMs without requiring a deep understanding of artificial intelligence,
21 including by providing them with the training data.³ In conversations between Databricks and

22 [REDACTED]
23 [REDACTED]. *See id.* at Ex. H (MOSAIC_ONAN_00047263). In his November
24 [REDACTED]

25 _____
26 ² *Databricks Completes Acquisition of MosaicML*, (July 19, 2023),
27 [https://www.databricks.com/company/newsroom/press-releases/databricks-completes-acquisition-](https://www.databricks.com/company/newsroom/press-releases/databricks-completes-acquisition-mosaicml)
28 [mosaicml](https://www.databricks.com/company/newsroom/press-releases/databricks-completes-acquisition-mosaicml) (on file with the Joseph Saveri Law Firm, LLP).

³ MosaicML (organization page), <https://huggingface.co/mosaicml> (on file with the Joseph Saveri Law Firm, LLP) (last visited Nov. 18, 2025).

1 5, 2025 deposition, Mr. Blakeney testified that [REDACTED]
 2 [REDACTED]
 3 [REDACTED]. *Id.* at Ex. S (Blakeney Dep. Tr. 420:12–425:7). Databricks employees [REDACTED]
 4 [REDACTED]
 5 [REDACTED]. *Id.* at Ex. I (MOSAIC_ONAN_00033977) (Databricks [REDACTED]
 6 [REDACTED]); *Id.* at Ex. J (MOSAIC_ONAN_00035926)
 7 (Databricks [REDACTED]
 8 [REDACTED]); *Id.* at Ex. K (MOSAIC_ONAN_00035902)
 9 (Databricks [REDACTED]
 10 [REDACTED]). As Naveen Rao recently
 11 testified, [REDACTED]
 12 [REDACTED]. *Id.* at Ex. R (Rao Dep. Tr. 65:17-66:10).

13 This discovery shows that Databricks [REDACTED]
 14 [REDACTED], thereby infringing Plaintiffs and Class Members’ exclusive rights under the
 15 Copyright Act. This newly discovered information directly supports a direct copyright infringement
 16 claim against Databricks.

17 **2. MosaicML Infringed Plaintiffs’ Copyrighted Works in Multiple Ways**

18 Recent discovery has also revealed information further supporting Plaintiffs’ direct infringement
 19 claim against MosaicML for additional use of Plaintiffs and Class Members’ copyrighted works. The
 20 current complaint alleges that MosaicML downloaded and used the RedPajama dataset, because publicly
 21 available information indicated that the MPT models were trained on RedPajama. However, Plaintiffs
 22 have now uncovered evidence that MosaicML employees (1) [REDACTED]
 23 [REDACTED]
 24 [REDACTED] and (2) [REDACTED]
 25 [REDACTED]. Below is some of the new evidence supporting this amendment:

- 26 • [REDACTED]
 27 [REDACTED]
 28 [REDACTED]

1 [REDACTED] *Id.* at Ex. L (MOSAIC_ONAN_00007809) (produced on
2 July 15, 2025).

- 3 • [REDACTED]
4 [REDACTED] *Id.* [REDACTED]
5 [REDACTED]. Shortly after,
6 MosaicML Chief Technology Officer Hanlin Tang [REDACTED]
7 [REDACTED]. *See* Castillo Guardado Decl. at Ex. M
8 (MOSAIC_ONAN_00049011) (produced on November 12, 2025) ([REDACTED]
9 [REDACTED]); *see also id.*
10 at Ex. T (Tang 30(b)(6) Dep. Tr. 95:21-96:6) (Mr. Tang, as the 30(b)(6) designee, confirming
11 that [REDACTED]).

- 12 • MosaicML Chief Scientist Jonathan Frankle testified during his deposition that [REDACTED]
13 [REDACTED]
14 [REDACTED]. *See* Frankle 30(b)(6) Rough Dep. Tr. at 257:5-8 (“[REDACTED]
15 [REDACTED]
16 [REDACTED] Frankle 30(b)(6) Rough Dep. Tr. at 56:21-57:15 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]).

20 Recent evidence shows that MosaicML and Databricks also [REDACTED]

21 [REDACTED]:

- 22 • On November 12, 2025, Defendants produced a document showing that MosaicML [REDACTED]
23 [REDACTED]. Castillo Guardado Decl.
24 at Ex. N (MOSAIC_ONAN_00049017). MosaicML’s then-Chief Scientist Jonathan Frankle
25 wrote that MosaicML [REDACTED]
26 [REDACTED]

27 4 [REDACTED]
28 [REDACTED] (on file
with the Joseph Saveri Law Firm, LLP).

1 [REDACTED] *Id.* at Ex. O (MOSAIC_ONAN_00034957)
2 (produced on August 22, 2025). And [REDACTED]
3 [REDACTED] *Id.* at Ex. R (Rao Dep. Tr. 113:4-
4 7).

5 • MosaicML [REDACTED]
6 [REDACTED]. *Id.* at Ex. P (MOSAIC_ONAN_00049034).

7 • Former MosaicML Head of Data Research Matthew Leavitt [REDACTED]
8 [REDACTED]
9 [REDACTED] *Id.* at Ex. F
10 (MOSAIC_ONAN_00048991) (produced October 29, 2025). Mr. Leavitt added: [REDACTED]
11 [REDACTED] *Id.*

12 • Mr. Blakeney testified that in addition to [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 *Id.* at Ex. S (Blakeney Dep. Tr. 346:16–348:7).

16 • Mr. Frankle confirmed that after he became an employee of Databricks [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] *Id.* at Ex. U (Frankle 30(b)(6) Rough Dep. Tr. at 149:16-
20 152:18).

21 Through this conduct— [REDACTED]
22 [REDACTED]—MosaicML infringed their copyrights.

23 **3. Defendants Contributed to and Induced the Infringement of Plaintiffs’ Works**
24 **by Third Parties**

25 As set forth above, Defendants’ use of Plaintiffs’ copyrighted works went beyond its own
26 infringements. Recent discovery demonstrates Defendants [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]. See supra Sections III.A.1 and III.A.2. MosaicML Chief Technology Officer Hanlin Tang
2 testified that [REDACTED]

3 [REDACTED] See Castillo Guardado Decl. at Ex. T (Tang 30(b)(6) Dep. Tr. 94:17-95:1).

4 Defendants knew that [REDACTED]
5 [REDACTED]. Id. at Ex. S (Blakeney Dep. Tr. 346:16–348:7). [REDACTED]

6 [REDACTED].⁵ Because using
7 Books3 to train LLMs infringes on Plaintiffs and Class members’ copyrighted works, by extension

8 Defendants are liable for [REDACTED]. And

9 Defendants [REDACTED]
10 [REDACTED], thereby contributing to the massive unauthorized infringement of Plaintiff

11 and Class Members’ works [REDACTED].

12 **B. Plaintiffs’ Amendment is Timely.**

13 In assessing diligence, the Court must assess “whether the moving party knew or should have
14 known the facts and theories raised by the amendment in the original pleading.” *AmerisourceBergen*
15 *Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 953 (9th Cir. 2006) (quoting *Jackson v. Bank of Hawaii*, 902
16 F.2d 1385, 1388 (9th Cir. 1990)). There is no undue delay when a party waits to move for leave to amend
17 “until they had sufficient evidence . . . upon which they could base claims of wrongful conduct.” *Kadrey*
18 *v. Meta Platforms, Inc.*, No. 23- cv-03417-VC, 2025 WL 82205, at *1 (N.D. Cal. Jan. 13, 2025) (citing
19 *DCD Programs*, 833 F.2d at 187).

20 Plaintiffs have been diligent in seeking the discovery supporting their motion to amend. The
21 deadline for Plaintiffs to seek leave to amend the Complaint as of right was May 30, 2025. Dkt. 111.
22 Plaintiffs filed a motion for leave to amend the Complaint by that deadline, Dkt. 124. Since then, the
23 Court granted the motion, Dkt. 129, Plaintiffs filed their First Amended Consolidated Complaint, Dkt.
24 131, and the Court ordered dismissal without prejudice of the direct infringement claim against
25 Databricks, Dkt. 162. Plaintiffs now seek to amend their Complaint based on documents produced since
26 July 2025, and based on key documents and deposition testimony obtained only during the past few

27
28 ⁵ *Id.*

1 weeks. Plaintiffs are not simply reasserting “an old theory of liability based on previously-known facts.”
2 *Royal Ins. Co. of Am. v. Sw. Marine*, 194 F.3d 1009, 1017 (9th Cir. 1999). Instead, Plaintiffs are promptly
3 moving to amend based on newly discovered facts. *See Watson v. Ford Motor Co.*, No. 18-cv-00928-SI,
4 2018 WL 3869563, at *2 (N.D. Cal. Aug. 15, 2018) (six-month delay was not “undue” because, among
5 other factors, the amending party “only recently learned that [a new party] had not been named”).⁶

6 **C. Plaintiffs’ Amendment is Made in Good Faith.**

7 Plaintiffs move in good faith to amend their Complaint to reflect the evidence discovered to date
8 and the scope of Defendants’ infringement. Defendants cannot claim bad faith and there is no evidence,
9 much less “strong evidence,” of bad faith. *See Sonoma Cnty. Ass’n of Retired Emps. v. Sonoma Cnty.*,
10 708 F.3d 1109, 1117 (9th Cir. 2013); *see also In re Intuitive Surgical Sec. Litig.*, No. 5:13-cv-01920-EJD,
11 2017 WL 363269, at *2 (N.D. Cal. Jan. 25, 2017) (finding no “bad faith when the result of an amendment
12 may actually be beneficial to clarifying the allegations at issue”); *Padilla v. Sears, Roebuck & Co.*, No.
13 5:12-cv-00653-EJD, 2012 WL 5505071, at *2 (N.D. Cal. Nov. 13, 2012) (finding no bad faith where the
14 amending party was “not seeking to unreasonably prolong the litigation or to destroy diversity by adding
15 new parties”). Instead, Plaintiffs’ proposed amendments bolster the existing claims and refine the
16 allegations against Defendants to conform the Complaint to recently produced evidence. In addition,
17 Plaintiffs have done exactly what the Court asked when it dismissed the direct infringement claim against
18 Databricks without prejudice: seek leave to amend once discovery reveals facts supporting Databricks’
19 liability for direct infringement. Dkt. 162.

20 **D. Plaintiffs’ Amendment is not Prejudicial.**

21 Defendants do not face undue prejudice from Plaintiffs’ proposed SACC’s introduction of their
22 new claims. In assessing prejudice, courts look at “whether the plaintiff’s actions impair the defendant’s
23 ability to go to trial or threaten to interfere with the rightful decision of the case.” *Malone v. US. Postal*
24

25 ⁶ Indeed, courts in this district have even allowed amendments well after the close of discovery. *See*
26 *Kadrey v. Meta Platforms, Inc.*, No. 23-cv-03417-VC, 2025 WL 82205, at *1 (N.D. Cal. Jan. 13, 2025)
27 (finding no undue delay and stating that “[i]n any event, ‘delay, by itself, is insufficient to justify denial
28 of leave to amend’” (quoting *Tiedemann v. von Blanckensee*, 72 F.4th 1001, 1011 (9th Cir. 2023))); *see*
also *Herrera v. Cnty. of San Benito*, No. 24-cv-01133-NC, 2025 WL 2323350, at *2 (N.D. Cal. Aug. 11,
2025) (finding good cause under Rule 16(b) by Plaintiff who filed motion for leave to amend three weeks
after close of fact discovery and one month after first learning of facts to support amended complaint).

1 *Serv.*, 833 F.2d 128, 131 (9th Cir. 1987). In the specific context of amending a complaint late in fact
 2 discovery, courts consider (1) whether the amendments will necessitate reopening discovery; (2) whether
 3 new parties will be added; and (3) whether the new allegations add claims based on different legal
 4 theories or require proof of different facts. *See In re Fritz Cos. Sec. Litig.*, 282 F. Supp. 2d 1105, 1109
 5 (N.D. Cal. 2003); *Netbula, LLC v. Bindview Dev. Corp.*, No. C06-00711 MJJ, 2007 WL 2221070, at *4
 6 (N.D. Cal. Aug. 2, 2007).

7 None of these factors are present here. First, Plaintiffs seek to amend their Complaint as a result
 8 of recent discovery, *not to obtain it*. Defendants cannot show a “need to reopen discovery and therefore
 9 delay the proceedings,” that could support denying a motion to amend under Rule 15’s liberal standard.
 10 *Lockheed Martin Corp. v. Network Sols., Inc.*, 194 F.3d 980, 986 (9th Cir. 1999). Here, the proposed
 11 amendments are supported by and the direct product of recent, existing discovery. Dkt. 169; *Hansen*
 12 *Beverage Co. v. Nat’l Beverage Corp.*, No. CV 06-5470 ER (CTx), 2007 WL 9747720, at *2 (C.D. Cal.
 13 Feb. 12, 2007) (finding at most marginal prejudice in allowing amendment of complaint a few weeks
 14 before fact discovery cut-off). If Plaintiffs’ motion is granted, Plaintiffs do not anticipate the need to serve
 15 additional, new discovery requests, although they will ask Defendants to respond to already served
 16 discovery on the DBRX models that the Court previously held was outside the scope of the operative
 17 complaint. Dkt. 162. This is a small additional burden and is well justified based on the newly adduced
 18 evidence.

19 Second, the proposed SACC adds no new parties. Third, Plaintiffs’ additional claims involving
 20 Defendants’ inducement of infringement and contributory copyright infringement involve the same
 21 universe of facts—Defendants’ use of datasets containing the Books3 dataset. Plaintiffs have already
 22 completed substantial discovery on these claims. Other than a forthcoming request for leave to depose
 23 five third parties⁷ regarding [REDACTED], Plaintiffs do not
 24 anticipate seeking additional discovery for these claims. This infringement is based on Defendants’ own
 25 documents and facts Defendants already have knowledge of. *See Kadrey*, 2025 WL 82205, at *1 (“To the
 26 _____

27 ⁷ Plaintiffs will seek leave to take five additional depositions, including Amazon, which [REDACTED]
 28 [REDACTED]; and [REDACTED].

1 extent that additional discovery is [] necessary, it can be accommodated without significantly disrupting
2 the case schedule.). That Defendants may “need to defend against the new claims on the merits and may
3 need to take additional discovery to do so does not constitute prejudice.” *Id.*

4 **E. Plaintiffs’ Amendment is not Futile.**

5 None of the amendments proposed are futile. “A proposed amendment is futile ‘only if no set of
6 facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient
7 claim or defense.’” *Padilla*, 2012 WL 5505071, at *2 (citation omitted).

8 The proposed SACC aligns the allegations and claims with the evidence by expanding on the
9 conduct infringing on Plaintiffs’ exclusive rights under the Copyright Act. First, it includes new
10 allegations that Databricks [REDACTED]. *E.g.*,
11 Proposed SACC ¶¶ 48-53, 57, 73-76, 88-94. Second, the proposed SACC clarifies the scope of
12 MosaicML’s infringing conduct by detailing [REDACTED]
13 [REDACTED]
14 [REDACTED]. *E.g.*, Proposed
15 SACC ¶¶ 38, 40-42, 68-72, 88-94. Finally, the SACC includes new claims for inducement of
16 infringement and contributory infringement against both Defendants for their [REDACTED]
17 [REDACTED]
18 [REDACTED]. *E.g.*, Proposed SACC ¶ 40-42, 50-51, 88-94, 97-99. These
19 amendments align the allegations to Defendants’ actual conduct, and ensures the Complaint will not
20 contain stale allegations by the time this case reaches class certification and trial. Nothing about these
21 claims is futile. Indeed, “if the underlying facts or circumstances relied upon by a plaintiff may be a
22 proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.”
23 *Walintukan v. SBE Ent. Grp., LLC*, No. 16-cv-01311-JST, 2017 WL 635278, at *2 (N.D. Cal. Feb. 15,
24 2017). There is no basis to conclude this is the “rare” case of futility. *Id.* (citation omitted).

25 **IV. CONCLUSION**

26 For the foregoing reasons, Plaintiffs respectfully request the Court grant Plaintiffs leave to file the
27 proposed Second Amended Consolidated Complaint.
28

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Respectfully submitted,

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