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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

Abdi Nazemian, et al.,
Plaintiffs,
vs.
NVIDIA Corporation,
Defendant.

Case No. 4:24-cv-01454-JST
Case No. 4:24-cv-02655-JST

**JOINT CASE MANAGEMENT
STATEMENT**

Hearing Date: August 20, 2024
Time: 2:00 PM
Place: via Zoom
Judge: Hon. Jon S. Tigar

Andre Dubus III, et al.,
Plaintiffs,
vs.
NVIDIA Corp.,
Defendant.

1 Pursuant to Federal Rule of Civil Procedure 26(f)(2), Civil Local Rule 16-9(a), the Standing
2 Order For All Judges of The Northern District Of California (updated Nov. 30, 2023), and the
3 Court’s Case Management Orders, Dkt. 22 (*Nazemian* docket) and Dkt. 39 (*Dubus* docket), counsel
4 for Plaintiffs Abdi Nazemian, Brian Keene, Stewart O’Nan, Andre Dubus III, Susan Orlean, and the
5 proposed class (together “Plaintiffs”) and Defendant NVIDIA Corporation (“NVIDIA” or
6 “Defendant”) (collectively the “parties”), have met and conferred and respectfully submit this Joint
7 Case Management Statement in advance of the Case Management Conference on August 20, 2024.

8 **1. Jurisdiction and Service**

9 This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331
10 (federal question jurisdiction), as this action alleges violations of the Copyright Act (17 U.S.C.
11 § 501). NVIDIA does not challenge personal jurisdiction. All parties have been served.

12 **2. Facts**

13 **Plaintiffs’ Statement**

14 The Complaints in the *Nazemian* Action and the *Dubus* Action each allege one count of
15 direct copyright infringement against Defendant NVIDIA Corporation. Plaintiffs are writers who
16 own copyrights in works allegedly used to train Defendant’s large language models (“LLMs”),
17 namely the NeMo Megatron models. The Complaints each allege that Defendant copied Plaintiffs’
18 registered Works to train (i.e., the process by which an Artificial Intelligence (“AI”) program can
19 “learn” how to anticipate and provide outputs to prompts) its LLMs in violation of the Copyright
20 Act, 17 U.S.C. § 501. Defendant’s LLMs copied The Pile and Books3 datasets, which include the
21 *Nazemian* and *Dubus* Plaintiffs’ Infringed Works, and used these copies to train its LLMs.
22 Defendant’s models—built on Plaintiffs’ Infringed Works—to directly compete with Plaintiffs’
23 Works. Plaintiffs have been injured by Defendant’s conduct.

24 **Defendant’s Statement**

25 In this lawsuit, Plaintiffs seek to create a new right to control the use of uncopyrightable
26 facts and ideas in the public domain. Their complaint runs counter to decades of settled precedent,
27 and would radically alter the scope of copyright law, far outside the realm of artificial intelligence.
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1 Plaintiffs' complaint asserts a single claim for direct copyright infringement. Plaintiffs do
2 not allege that the outputs of NVIDIA's AI models have ever copied protected expression. Instead,
3 Plaintiffs solely target the process by which AI models are trained. Training measures statistical
4 correlations in the aggregate, across a vast body of data, and encodes them into the parameters of a
5 model. Plaintiffs do not try to claim a copyright over those statistical correlations, asserting instead
6 that the training data itself is "copied" for the purposes of infringement. But Plaintiffs cannot use
7 copyright to preclude access to facts and ideas, and the highly transformative training process is
8 protected entirely by the well-established fair-use doctrine. Indeed, to accept Plaintiffs' theory
9 would mean that an author could copyright the rules of grammar or basic facts about the world.
10 That has never been the law, for good reason.

12 **3. Legal Issues**

13 **Plaintiffs' Position**

14 The legal and factual issue at the core of this case is whether Defendant's unlawful copying
15 has violated the Copyright Act, 17 U.S.C. § 501, *et seq.* NVIDIA has indicated that it will rely upon
16 a fair use defense. But NVIDIA will not be able to carry its burden to prove fair use. For example,
17 NVIDIA has not disputed that it copied Plaintiffs' work to train its AI models without consent,
18 credit, or compensation. By relying on works taken without creators' permission, any argument on
19 fair use will fall short. *Harper & Row v. Nation Enterprises*, 471 U.S. 539, 562 (1985) (explaining
20 that fair use defense "presupposes good faith"); *Mfg. Automation & Software Sys., Inc. v. Hughes*,
21 2018 WL 3197696, at *11 (C.D. Cal. June 25, 2018) ("[C]ourts have concluded that fair use is not
22 an available defense to intermediate copying when a defendant is in unauthorized possession of a
23 plaintiff's source code."). That is before considering the sheer volume of infringements, which, of
24 course, counsels against fair use. *See Harper & Row*, 471 U.S. at 569 ("Isolated instances of minor
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1 infringements, when multiplied many times, become in the aggregate a major inroad on copyright
2 that must be prevented.”) (quoting S. Rep. No. 473 at 65 (1975)).

3 There are numerous other questions of law or fact common to the class, and those issues
4 predominate over any question affecting individual class members. *See* Section 9, *infra*.

5 **Defendant’s Position**

6 Among other issues, this case presents two interrelated questions: *First*, whether Plaintiffs’
7 claims represent an impermissible attempt to copyright facts and grammar. *Second*, whether any
8 copying by NVIDIA is a fair use.

9 Although generative AI is a recent phenomenon, the legal principles governing this case
10 were established long ago: Copyright law protects specific expressions, but does not grant property
11 rights over facts, ideas, data, or information. As the Supreme Court has explained: “[N]o matter
12 how much original authorship the work displays, the facts and ideas it exposes are free for the
13 taking.” *Feist Pubs., Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349 (1991). “[T]his is not some
14 unforeseen byproduct of a statutory scheme. It is, rather, the essence of copyright and a
15 constitutional requirement [C]opyright assures authors the right to their original expression,
16 but encourages others to build freely upon the ideas and information conveyed by a work This
17 result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of
18 science and art.” *Id.* at 349-50 (internal quotations and citations omitted); *Baker v. Selden*, 101 U.S.
19 99, 102-04 (1879); U.S. Const., Art. I, § 8, cl. 8; 17 U.S.C. § 102(b).

22 In addition, fair use protects the ability to copy particular expressions for a transformative
23 purpose. As an example, the Ninth Circuit Court of Appeals ruled that making intermediate copies
24 of entire source code files was fair use where the copying provided access to the unprotected ideas
25 and functions embedded in that code and the defendant created a transformative new product. *Sony*
26 *Computer Entertainment Inc. v. Connectix Corp.*, 203 F.3d 596, 602-08 (9th Cir. 2000). As another
27 example, the Second Circuit Court of Appeals ruled that copying entire books to create a searchable
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1 database was fair use. *Authors Guild v. Google, Inc.*, 804 F.3d 202, 224-25 (2d Cir. 2015). NVIDIA
2 disputes Plaintiffs characterizations of the facts and law and specifically denies that NVIDIA has
3 ever acted in bad faith. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 585 n.18, (1994) (“If the
4 use is otherwise fair, then no permission need be sought or granted.”); *Google, LLC v. Oracle Am.,*
5 *Inc.*, 593 U.S. 1, 32 (2021) (“our decision in *Campbell* expressed some skepticism about whether
6 bad faith has any role in a fair use analysis. We find this skepticism justifiable”).

8 **4. Motions**

9 There are no pending motions at this time.

10 As noted in Section 10 (Related Cases) below, the *Nazemian* and *Dubus* Actions have been
11 judicially related. Plaintiffs are discussing formal consolidation.

12 As noted in Section 8 (Discovery) below, the parties have not yet agreed upon a stipulated
13 ESI Protocol and Protective Order, but are continuing to meet and confer on those topics.

14 The parties hope to resolve discovery disputes without judicial intervention, but anticipate
15 that discovery motions may be necessary. Plaintiffs also anticipate a class certification motion, and
16 possible summary judgment motions.

17 **Defendant’s Position:**

18 To the extent Plaintiffs do not agree to consolidate the *Nazemian* and *Dubus* Actions,
19 NVIDIA may file a motion to consolidate. In addition, as noted in Section 8 (Discovery) below,
20 NVIDIA proposes a phased approach to discovery, consistent with *O’Nan v. Databricks, Inc.*, No.
21 3:24-cv-01451-CRB, Dkt. No. 53 (N.D. Cal. Mar. 8, 2024) (hereinafter, “*O’Nan*”). At the
22 completion of the first phase of discovery regarding fair use, NVIDIA intends to file a summary
23 judgment motion as to the named Plaintiffs before class certification. Should Plaintiffs also seek to
24 file a cross-motion for summary judgment at the same time, NVIDIA will consider at that time
25 whether to waive its rights under the one-way intervention rule.

26 **5. Amendment of Pleadings**

27 NVIDIA has answered the complaints in both actions. The parties do not anticipate any
28 substantive amendments to the pleadings at this time. As set out above in Section 4 (Motions) the

1 parties are discussing consolidation. To the extent the actions are consolidated, Plaintiffs will file a
2 consolidated complaint, and NVIDIA will file a consolidated answer in response.

3 **6. Evidence Preservation**

4 The parties have reviewed this Court's Guidelines Relating to the Discovery of
5 Electronically Stored Information and have met and conferred pursuant to Rule 26(f) regarding
6 reasonable and proportionate steps to preserve evidence relevant to the issues evident in the case.
7 The parties are aware of their obligations and have taken reasonable steps to preserve potentially
8 relevant evidence. The parties will continue to meet and confer concerning ESI.

9 The parties have confirmed that they are unaware of any source of ESI that is reasonably
10 expected to be subject to discovery that has been destroyed, not maintained, or is not reasonably
11 accessible.

12 **7. Disclosures**

13 Plaintiffs and Defendant have served their Federal Rule of Civil Procedure 26(a) initial
14 disclosures. The Parties will supplement initial disclosures as necessary, consistent with Rule 26(e).

15 **8. Discovery**

16 Plaintiffs had an initial Rule 26(f) meet and confer with Defendant on June 19, 2024.
17 Counsel for all parties met and conferred on a coordinated discovery plan, addressed Rule 26(f)
18 requirements, identified locations of potential ESI, and continued negotiations on discovery
19 stipulations. Plaintiffs and NVIDIA agree to coordinate all discovery, including discovery
20 stipulations.

21 **a. Scope of Discovery**

22 The parties agree that discovery is governed by the Federal Rules of Civil Procedure. The
23 Parties anticipate they may have to account for some discoverable data being too voluminous to
24 produce through standard discovery practices, and will work together to evaluate potential
25 alternatives for the production of any such relevant data if necessary. The parties will continue to
26 meet and confer on this topic.

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1 The parties will meet and confer on any discovery disputes that may arise in an effort to
2 resolve them without court intervention. The parties agree to electronic service in all instances where
3 such service is necessary.

4 **Plaintiffs' Statement:** Plaintiffs anticipate conducting discovery, including requesting
5 documents and eliciting testimony from NVIDIA regarding, among other things: the development
6 and training of Defendant's NeMo Megatron LLMs; the training data for the NeMo Megatron
7 LLMs; Defendant's copying of The Pile dataset and Books3, and general awareness of, and policies
8 about, using copyrighted materials and/or pirated libraries in training data; sources of funding for
9 the development of the NeMo Megatron LLMs; financial market and profitability of the NeMo
10 Megatron LLMs; licensing deals and negotiations for training data; knowledge of, and participation
11 within, the AI training data market. Plaintiffs reserve all rights to update, add, or amend this list as
12 additional information becomes available.

13 Given the numerous common legal and factual issues in this case, Plaintiffs do not believe
14 that phasing or bifurcating discovery is necessary or appropriate in this matter. Regarding
15 Defendants' proposed sequencing of summary judgment motions (presumably with respect to fair
16 use) and class certification, Defendants' proposed schedule is at odds with Rule 23. Plaintiffs, of
17 course, dispute that fair use is suitable for resolution by dispositive motion practice, as it is instead
18 an issue that "must go to a jury." *Thomson Reuters Enter. Centre GmbH v. Ros Intelligence Inc.*, ___
19 F. Supp. 3d ___, 2023 WL 6210901, at *7 (D. Del. Sep. 25, 2023) (denying summary judgment on
20 fair use in generative AI case). In any event, any determination regarding fair use would be an issue
21 common to the class, and thus does not require determination prior to class certification. Further,
22 NVIDIA's proposal would deny Plaintiffs the opportunity to seek summary judgment before class
23 certification due to the one-way intervention rule. *Moore v. Mars Petcare US, Inc.*, No. 16-CV-
24 07001-MMC, 2021 WL 6063577, at *2 (N.D. Cal. Dec. 22, 2021). Nothing prevents NVIDIA from
25 seeking early summary judgment before class certification even if a schedule contemplates
26 dispositive motions after class certification. Such a motion, however, would waive the right to have
27 any judgment bind the proposed class. *Schwarzschild*, 69 F.3d at 297. Should the Court be inclined
28 to adopt NVIDIA's proposed sequencing of summary judgment and class certification, it should

1 allow Plaintiffs and NVIDIA to file summary judgment prior to litigating class certification, but
2 only if NVIDIA expressly waives objections to one-way intervention. *See* Order Directing Response
3 Re: Case Schedule, *O’Nan v. Databricks Inc.*, No. 24-cv-01451-CRB (N.D. Cal. July 1, 2024), ECF
4 No. 51 (requiring express waiver of one-way intervention objections if court adopts schedule setting
5 summary judgment before class certification).

6 *Subjects of Discovery from Defendant:* The following is a non-exhaustive list of subjects
7 regarding which Plaintiffs have sought or plan to seek discovery. Plaintiffs reserve all rights to
8 expand upon these subject areas as the case proceeds:

- 9 • The interactions between class members (including Plaintiffs) and Defendant,
10 including but not limited to requests and/or demands from the owners of works used
11 to train Defendant’s LLMs regarding Defendant’s use of those works.
- 12 • Defendant’s conduct that caused the LLMs to ingest and distribute Plaintiffs’ and the
13 Class’s works, including but not limited to Defendant’s knowledge regarding those
14 actions and their consequences.
- 15 • The planning for, and the creation, operation, modification, distribution and
16 maintenance of Defendant’s LLMs, including but not limited to source code.
- 17 • Defendant’s efforts to obtain licenses or other permission to use works used to train
18 its LLMs.
- 19 • Defendant’s organizational structure and corporate documents.
- 20 • Contracts, licenses, or other agreements between Defendant and any of Defendant’s
21 subsidiaries, affiliates, or joint ventures, and any Plaintiffs or third parties that relate
22 to Defendant’s LLMs.
- 23 • Information regarding all material used to train Defendant’s LLMs, including the
24 materials themselves.
- 25 • Facts related to affirmative defenses raised by Defendant.
- 26 • Defendant’s policies and practices regarding any use of copyrighted material.
- 27 • Defendant’s interactions with government or regulatory entities regarding
28 Defendant’s LLMs, including document submissions, requests for information or

1 documents, testimony, and correspondence.

- 2 • Defendant’s participation and/or involvement in other lawsuits, private
3 administrative proceedings, or regulatory proceedings regarding generative AI
4 LLMs.

5 **Defendant’s Statement:**

6 NVIDIA reserves all rights to object to Plaintiffs’ efforts to seek discovery into such matters
7 listed above. NVIDIA does not contemplate that the scope of discovery in this case will be extensive
8 or believe that there is any reason to depart from the Federal Rules of Civil Procedure or the Court’s
9 Model Orders.

10 NVIDIA proposes a phased approach to discovery, allowing the Court and parties to address
11 the key issue of fair use early and efficiently. In the *O’Nan* case—which has the same named
12 plaintiffs, plaintiffs’ counsel, and AI training-related copyright allegations as *Nazemian* and *Dubus*
13 (and was even filed in this District the same day as the *Nazemian* complaint)—Judge Breyer recently
14 adopted a phased approach, addressing discovery and summary judgment motions regarding fair
15 use in the first phase. *O’Nan et al v. Databricks, Inc. et al.*, No. 3:24-cv-01451-CRB, Dkt. No. 53
16 (N.D. Cal. Mar. 8, 2024). NVIDIA believes that the same approach would promote judicial, party,
17 and third-party economy here as well. Accordingly, it proposes a phased approach to discovery.

18 *Subjects of Discovery from Plaintiffs:* NVIDIA anticipates seeking discovery, including
19 documents and testimony from Plaintiffs regarding, among other things, the following topics:¹

- 20 • Plaintiffs’ purported ownership of and copyright interest in the works the subject of the
21 Complaints (the “asserted works”);
22 • Copyright registrations associated with the asserted works;
23 • Plaintiffs’ asserted works, including their creation, publication, and contents;
24 • Plaintiffs’ marketing, licensing and distribution of the asserted works;
25 • The market for Plaintiffs’ works;

26
27 ¹ NVIDIA reserves all rights to update, add, or amend this list as additional information becomes
28 available, including to refine it to just those subjects relevant to NVIDIA’s fair use affirmative
defense should the Court phase discovery as requested.

- 1 • Plaintiffs' lack of harm from NVIDIA's conduct alleged in the Complaint; and
- 2 • Any alleged injury suffered by Plaintiffs from NVIDIA's conduct.

3 **b. Completion of Discovery**

4 The Court has not set a deadline for the close of fact discovery. Plaintiffs propose that fact
5 discovery (both merits and class) should be completed by October 25, 2025, with *Daubert* motions
6 filed (and expert discovery completed) by November 22, 2025. Under Plaintiff's proposed schedule,
7 there will be no need for the Court to reset another round of deadlines for class discovery.

8 Should the Court adopt NVIDIA's proposed phasing of discovery, NVIDIA proposes that
9 fact discovery related to the fair use defense be completed by March 5, 2025, expert discovery
10 related primarily to the fair use defense be completed by July 2, 2025, and that a further Case
11 Management Conference be conducted after the Court rules on the intended summary judgment
12 motion on fair use, to determine a further schedule, should it prove necessary.

13 **c. Discovery Limitations**

14 The parties have met and conferred regarding the discovery limits set forth in the Federal
15 Rules of Civil Procedure.

16 **Plaintiffs' Statement:**

17 Given the nature of the legal and factual issues in this case, Plaintiffs believe that expansion
18 of the discovery limits as set forth in the Federal Rules of Civil Procedure will be necessary in this
19 case. Plaintiffs have conferred with Defendant regarding the likelihood they will require expansion
20 of the number of depositions and interrogatories and believe it is premature to limit the number of
21 depositions and interrogatories.

22 Plaintiffs seek to have a protocol established for depositions and an inspection protocol for
23 training data and source code.

24 Plaintiffs also seek an expert discovery order.

25 **Defendant's Statement:**

26 NVIDIA believes the limits imposed by the Federal Rules of Civil Procedure should apply
27 to this case, with the clarification that those limits should apply per side and not per party (*i.e.*, 25
28 Interrogatories per side, 10 depositions per side). Plaintiffs have not articulated a basis to depart

1 from these default rules, and NVIDIA reserves its right to object to any future request by Plaintiffs
2 for expansion of the applicable discovery limits. Plaintiffs have not yet provided drafts or details of
3 their proposed deposition protocol, inspection protocol, and expert discovery order. NVIDIA is
4 willing to consider Plaintiffs' proposals subject to a review of their details.

5 **d. Preservation and Production of Electronically Stored Information**

6 The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored
7 Information ("ESI Guidelines"). The parties have and are continuing to meet and confer regarding
8 a joint stipulated ESI Protocol, and will seek guidance from the Court to the extent there are any
9 disputed issues.

10 **Plaintiffs' Statement:**

11 Neither the Standard Model Stipulated Order nor the Patent Model Stipulated Order
12 regarding Discovery of Electronically Stored Information are suitable to effectively govern and
13 manage the complex discovery that will arise in this case. The Patent Model Stipulated Order has
14 proven unworkable in similar cases presenting similar issues. Plaintiffs would like the opportunity
15 to brief this issue before the court and intend to submit affidavits from discovery experts who will
16 opine that the Model Stipulated Orders, when drafted, were not intended for use with cases like this
17 one, and are specifically inappropriate in this case, given its facts, size, and complexity. In
18 recognition of this, ESI Orders in other class actions challenging various generative AI models,
19 including large language models like the ones at issue here, have departed from the Model Orders,
20 and particularly, the Patent Model Order. *See, e.g., Tremblay v. OpenAI, Inc.*, No. 23-cv-03223-
21 AMO (RMI) (N.D. Cal. July 31, 2024) (resolving discovery dispute in generative AI class action
22 where *both* proposed ESI protocols were departures from the Model Orders); *Kadrey v. Meta*
23 *Platforms, Inc.*, No. 23-cv-03417-VC (N.D. Cal. Apr. 10, 2024), ECF No. 101 (entering ESI order
24 in generative AI class action that is a departure from model order).

25 **Defendant's Statement:**

26 NVIDIA does not believe that there is any reason to depart from the Court's Patent Model
27 Stipulated Order regarding Discovery of Electronically Stored Information (the "Patent Model
28 Order") as the baseline ESI order for this case. The Patent Model Order is often used outside the

1 patent context in cases involving technical subject matter, such as this one. For example, this Court
2 has found that the Patent Model Order with minor modifications (to reflect the parties and facts in
3 the case) was appropriate in another case involving copyright claims relating to LLM technology.
4 *See, e.g., Doe 1 et al. v. Github, Inc. et al.*, Case No. 4:22-cv-06823-JST, Dkt. 165 (N.D. Cal. Oct.
5 27, 2023) (Joint Letter regarding ESI Order proposals), Dkt. 168 (N.D. Cal. Nov. 1, 2023) (Order
6 granting Defendants' proposed Order re: Discovery of Electronically Stored Information). NVIDIA
7 will work with the Plaintiffs to address any specific additions or changes Plaintiffs might propose
8 to the Patent Model Order, and to this end has requested specific additions or changes to the Model
9 Orders from Plaintiffs but to date has not received them. Because the parties are still conferring
10 regarding any specific additions Plaintiffs may have to the Patent Model Order, the dispute is not
11 ripe, and briefing on the issue is not appropriate.

12 **e. Protective Order**

13 The parties have and are continuing to meet and confer regarding a joint stipulated Protective
14 Order to be entered by the Court. The parties will continue to meet and confer on this topic in an
15 effort to come to an agreement on a stipulated Protective Order to submit to the Court.

16 **f. Privilege**

17 The parties have and are continuing to meet and confer regarding a joint stipulated protocol
18 for privilege issues, including privilege logging, which will be incorporated into the joint stipulated
19 ESI protocol.

20 With respect to the Rule 502(d) Agreement, the parties have and are continuing to meet and
21 confer, and have agreed to address a Rule 502(d) order as part of the proposed Protective Order,
22 noted above.

23 **g. Deposition Logistics**

24 The parties will meet and confer in good faith regarding a protocol for conducting in-person
25 and hybrid depositions. Plaintiffs expect that in-person depositions will be conducted in the
26 Northern District of California or elsewhere in the United States. NVIDIA does not object to in-
27 person depositions when feasible, depending on the location of the witness, but reserves the right to
28 request a remote deposition when more appropriate or convenient for a particular witness, or for

1 third-party depositions. The parties are unaware of depositions to be taken outside the United States
2 at this time.

3 The parties agree to meet and confer should any disputes arise as to location of depositions
4 and/or use of remote depositions.

5 Plaintiffs believe that a deposition protocol is appropriate to set mutually agreed upon
6 guidelines for depositions in this case. NVIDIA is willing to consider any protocol proposed by
7 Plaintiffs.

8 **h. Discovery Issues and Potential Disputes**

9 Plaintiffs served their first set of Requests for Production on July 10, and NVIDIA served
10 objections and responses to those Requests for Production on August 9. NVIDIA served their first
11 set of Requests for Production on July 23. The parties have not identified any specific discovery
12 disputes and are prepared to meet and confer on any discovery disputes that may arise.

13 **9. Class Action**

14 Plaintiffs filed these two cases as putative class actions. Counsel for both sides have
15 reviewed the Procedural Guidance for Class Action Settlements.

16 **Plaintiffs' Statement:** As an initial matter and, as explained above, NVIDIA's proposal to
17 sequence summary judgment before class certification is inappropriate because it precludes
18 Plaintiffs from moving for summary judgment *after* class certification, which would run counter to
19 the framework provided by Rule 23. Indeed, in recognition of this, Judge Martínez-Olguín rejected
20 a similar schedule seeking to sequence dispositive motions before class certification. *Tremblay v.*
21 *OpenAI Inc.*, Case No. 23-cv-03223 (N.D. Cal.), ECF No. 77 at 12:8-13:9 (recognizing in generative
22 AI class action that sequencing summary judgment before class certification “will deny [Plaintiffs]
23 the opportunity to be able to seek summary judgment” and denying request to sequence summary
24 judgment before class certification). Should the Court be inclined to entertain NVIDIA's proposed
25 schedule, it should decline to do so unless NVIDIA expressly waives any objections based on one-
26 way intervention. *See* Section 8.a, *supra*.

27 Plaintiffs believe that the class is so numerous that joinder of all members is impracticable.
28 Plaintiffs do not know the exact size of the class since that information is within the exclusive control

1 of Defendant. Upon information and belief, Plaintiffs believe and allege that the number of class
2 members is in the millions. Plaintiffs allege that, like all class members, their copyright-protected
3 works were used to train Defendant's LLMs. Plaintiffs allege all members of the class have been
4 similarly injured by Defendant's conduct. Plaintiffs believe there are numerous questions of law or
5 fact common to the class, and that those issues predominate over any question affecting only
6 individual class members. These common legal and factual issues including the following:

- 7 • Whether Defendant violated the copyrights of Plaintiffs and the class when it
8 downloaded copies of Plaintiffs' copyrighted works and used them to train Defendant's
9 LLMs.
- 10 • Whether this Court should enjoin Defendant from engaging in the unlawful conduct
11 alleged herein, and the appropriate scope of that injunction.
- 12 • Whether any affirmative defense (including fair use) excuses Defendant's conduct.
- 13 • The amount of damages.

14 **Defendant's Statement:**

15 NVIDIA disputes Plaintiffs' class certification arguments and maintains that the proposed
16 putative classes cannot be certified under the requirements of Rule 23. After the completion of
17 phased discovery regarding the question of fair use, NVIDIA intends to file a motion for summary
18 judgment on fair use on the named Plaintiffs' claim prior to class certification. At that time, should
19 Plaintiffs also seek to file a motion for summary judgment, NVIDIA would consider whether to
20 waive the one-way intervention prohibition against a pre-certification summary judgment motion
21 by Plaintiffs.

22 To the extent the Court reaches the issue of class certification, NVIDIA contends that class
23 certification is not appropriate. Among other factors, NVIDIA expects that individual questions of
24 law and fact will predominate over common questions, including whether class members hold valid
25 copyright registrations, the existence and timing of registration of the relevant works, whether the
26 works were created as works for hire, whether putative rights-holders have assigned or transferred
27 their rights, the nature of and market for each work, the marketing and licensing history of each
28 work, whether each author or copyright owner has authorized or objects to use of the work in

1 connection with machine learning or models using artificial intelligence, and differing injury
2 flowing from the use of each work.

3 **10. Related Cases**

4 Pursuant to the Court's May 29, 2024 Order (*Nazemian* Dkt. 47) (*Dubus* Dkt. 17), the later-
5 filed case *Dubus et al. v. NVIDIA Corporation*, 4:24-cv-02655-JT (N.D. Cal.) has been related to
6 *Nazemian et al. v. NVIDIA Corporation*, No. 3:24-cv-01454 (N.D. Cal.). Counsel are discussing
7 consolidation of these two cases. NVIDIA believes the cases should be consolidated expeditiously
8 in the interest of efficiency and judicial economy.

9 The parties are unaware of any other cases brought on behalf of authors with registered
10 copyrights involving Defendant's LLMs other than the two cases involved here.

11 **11. Relief**

12 **Plaintiffs' Statement:** The *Nazemian* and *Dubus* Plaintiffs seek statutory and other damages
13 under 17 U.S.C. § 504 for Defendant's violations of the copyrights of Plaintiffs and the class,
14 including an award of reasonable attorneys' fees under 17 U.S.C. § 505 or other applicable statutes.
15 Plaintiffs further seek destruction or other reasonable disposition of all copies Defendant made or
16 used in violation of the exclusive rights of Plaintiffs and the class, pursuant to 17 U.S.C. § 503(b).
17 Plaintiffs seek pre- and post-judgment interest on damages awarded to Plaintiffs and the class, at the
18 highest legal rate from and after March 8, 2024, the date the *Nazemian* class action Complaint was
19 first served on Defendant.

20 **Defendant's Position:** NVIDIA denies that Plaintiffs are entitled to any damages,
21 permanent injunction, or other relief whatsoever, or that the classes alleged in the Complaints can
22 be certified. NVIDIA believes it is premature to opine on methods of calculating potential damages.

23 **12. Settlement and ADR**

24 ADR Certifications pursuant to ADR Local R. 3-5(b) were filed by the *Nazemian* Plaintiffs
25 on May 9, 2024 (*Nazemian* Dkts. 32-34) and by the *Dubus* Plaintiffs on June 17, 2024 (*Dubus* Dkts.
26 44-45). NVIDIA filed ADR Certifications pursuant to ADR Local R. 3-5(b) in both cases on July
27 29, 2024. The parties continue to meet and confer on an ADR plan.

28

1 **13. Other References**

2 The parties agree that this case is not suitable for binding arbitration, a special master, or the
3 Judicial Panel on Multidistrict Litigation at this time.

4 The parties do not oppose having discovery disputes heard by a magistrate judge if the Court
5 is inclined to appoint a discovery magistrate.

6 **14. Narrowing of Issues**

7 No issues have yet been narrowed by agreement or by motion.

8 As described in Section 8 (Discovery), NVIDIA believes that a phased approach to discovery
9 and early summary judgment will appropriately narrow the issues in the case.

10 **15. Scheduling**

11 **a. Expedited Trial Procedures**

12 The parties agree that these Actions are inappropriate for the Expedited Trial Procedure of
13 General Order 64.

14 **b. Case Schedule**

15 Plaintiffs propose the following schedule:

<u>Event</u>	<u>Plaintiffs' Proposed Date</u>
Parties must submit stipulated ESI Protocol or file 10-page joint letter brief. The parties shall simultaneously exchange sections of the joint letter brief in two phases with agreed-upon deadlines prior to the submitting to the Court	September 17, 2024
Parties must submit stipulated Protective Order or file 10-page joint letter brief. The parties shall simultaneously exchange sections of the joint letter brief in two phases with agreed-upon deadlines prior to the submitting to the Court	September 17, 2024
Producing parties propose document custodians, non-custodial document sources, search terms, any agreed-upon or required custodian cellphone information	October 1, 2024
Requesting parties propose additional custodians and non-custodian document sources, and any additional search terms ("Requesting Party's Proposal")	October 10, 2024

<u>Event</u>	<u>Plaintiffs' Proposed Date</u>
Defendant shall produce a sample production of data from its relevant Structured Data databases and model data	October 17, 2024
Date by which parties must submit an agreed upon deposition protocol or a joint letter brief regarding any disputed areas	October 17, 2024
Producing party to accept or reject the Requesting Party's Proposal	October 24, 2024
Parties shall complete their meet and confer process regarding Defendant's Structured Data sample, including raising any questions about the sample productions	October 24, 2024
Date by which parties are to submit joint letter brief to the Court regarding areas of dispute on custodial and non-custodial document sources (if any) and disputed search terms (if any)	October 31, 2024
Deadline for Plaintiffs to identify five priority custodians	October 31, 2024
Defendant shall answer questions about the form and contents of its Structured Data and any perceived deficiencies therein in order to facilitate the timely production of agreed upon Structured Data	November 7, 2024
Date by which parties must submit an agreed upon protocol for the authentication and qualification of documents as business records or a joint letter brief regarding any disputed areas.	November 22, 2024
Deadline for substantial completion for production of priority custodians' documents and production of Structured Data	December 12, 2024
Deadline for requesting parties' second phase additional custodians and search term proposal	January 10, 2025
Deadline for resolution of second phase additional custodians and search term proposals or filing of joint letter brief regarding any disputed issues	January 17, 2025
Substantial completion of production of documents and unstructured data in response to discovery requests served prior to July 14, 2024	February 14, 2025

<u>Event</u>	<u>Plaintiffs' Proposed Date</u>
<p>Deadline for Producing party to complete production of privilege logs for any documents redacted or withheld on the basis of any privilege to date.</p> <p>Privilege logs for documents reviewed in connection with a given production of documents should be produced concurrently with or shortly after each such document production</p>	February 21, 2025
Producing parties to file certifications of substantial completion of document productions and production of privilege logs, specifying any categories of requested documents not yet produced to the requesting party, and the volume of documents left to review for privilege	February 21, 2025
Deadline for Plaintiffs to file an amended pleading	July 18, 2025
Service of Plaintiffs' Expert Report(s)	August 1, 2025
Service of Defendant's Expert Report(s)	September 16, 2025
Close of Fact Discovery	October 28, 2025
Service of Plaintiffs' Expert Rebuttal Report(s)	November 1, 2025
Filing of Plaintiffs' Motion for Class Certification	November 15, 2025
Filing of Defendant's <i>Daubert</i> Motions regarding Plaintiffs' Expert(s)	November 22, 2025
Filing of Defendant's Opposition to Motion for Class Certification	December 12, 2025
<p>Filing of Plaintiffs' Opposition to Defendants' <i>Daubert</i> Motions</p> <p>Filing of Plaintiffs' <i>Daubert</i> Motions on Defendants' Expert(s)</p>	December 17, 2025
Filing of Plaintiffs' Reply in Support of Motion for Class Certification	January 10, 2026

<u>Event</u>	<u>Plaintiffs' Proposed Date</u>
Filing of Defendant's Reply in Support of <i>Daubert</i> Motion(s)	January 17, 2026
Filing of Defendant's Opposition to Plaintiffs' <i>Daubert</i> Motion(s)	
Filing of Plaintiffs' Reply in Support of Plaintiffs' <i>Daubert</i> Motion	January 30, 2026
Hearing on Class Certification and <i>Daubert</i> Motions	<i>To be determined by the Court</i>
Deadline for filing Rule 56 Motions	April 22, 2026
Deadline for filing Oppositions to Rule 56 Motions	June 23, 2026
Deadline for filing Replies in Support of Rule 56 Motions	July 22, 2026
Hearing on Rule 56 Motions	<i>At the Court's convenience</i>
Trial Ready Date	November 3, 2026

Defendant's Position: Plaintiffs' proposed schedule is not workable for multiple reasons. First, most of the dates impose ESI-related deadlines that are not based on the N.D. Cal. Model ESI Protocols and have not otherwise been agreed to by the parties or ordered by the Court (*e.g.*, deadlines for proposing "custodian cellphone information" and identifying "priority custodians," and various deadlines relating to "Structured Data databases"). Entry of a schedule containing such deadlines is premature when the parties have not yet submitted a proposed ESI protocol for the Court's consideration. Second, Plaintiffs would schedule the close of fact discovery *after* service of expert reports, while allowing Plaintiffs (but not NVIDIA) to later submit a rebuttal expert report. Plaintiffs have also not proposed a date for the close of expert discovery. Third, Plaintiffs' briefing schedule for class certification and *Daubert* motions (which would be briefed concurrently) is

1 inconsistent, requiring NVIDIA to file its *Daubert* motions one month before Plaintiffs. Many of
2 Plaintiffs' proposed deadlines also fall on a Saturday.

3 NVIDIA proposes a phased approach to discovery, allowing the Court and parties to address
4 the key issue of fair use early and efficiently. As discussed in Section 8(a) *supra*, Judge Breyer
5 recently adopted a similar phased schedule in the *O'Nan* case. To the extent the case is not resolved
6 during this phase, the parties will confer on scheduling any further proceedings regarding class
7 certification and a trial date.

8 Event	NVIDIA's Proposed Schedule
9 Date by which the parties, after good faith efforts, anticipate they will have substantially completed their production of documents in response to discovery regarding fair use that is not subject to any pending dispute	Wednesday, January 15, 2025
10 Close of fact discovery related to fair use ²	Wednesday, March 5, 2025
11 Opening Expert Reports related to fair use	Wednesday, April 2, 2025
12 Rebuttal Expert Reports related to fair use	Wednesday, May 7, 2025
13 Reply Expert Reports related to fair use	Thursday, May 29, 2025
14 Close of Expert Discovery related to fair use	Wednesday, July 2, 2025
15	
16 Deadline to file Opening MSJ and <i>Daubert</i> briefs related to fair use regarding named Plaintiffs ³	Not later than Wednesday, August 13, 2025
17	
18 Deadline for filing Oppositions to MSJ and <i>Daubert</i> Briefs related to fair use regarding named Plaintiffs	If Motion is filed on August 13, 2025, not later than Wednesday, September 10, 2025
19	
20 Deadline for filing Replies in Support of MSJ and <i>Daubert</i> Briefs related to fair use regarding named Plaintiffs	If Motion is filed on August 13, 2025, not later than Wednesday, October 8, 2025
21	

22 ² NVIDIA respectfully proposes a schedule for fact and expert discovery focused primarily on
23 the issue of fair use. After the close of fact and expert discovery regarding fair use, NVIDIA
24 intends to seek leave to file a dispositive motion focusing on the fair use affirmative defense.
25 Should the Court grant NVIDIA leave to file such a motion, and after the Court's ruling on the
26 issue of fair use, if any issues remain, NVIDIA proposes further scheduling of proceedings on
27 class certification and determination of a trial date, if necessary, through further Case Management
28 Conferences.

³ In accordance with the Court's Standing Order, which requires leave of the Court for a party to
file more than one summary judgment motion, NVIDIA intends to request leave to move for
summary judgment on the case-dispositive issue of fair use and will file such a motion no later
than August 13, 2025, while later moving for summary judgment on other issues if the case has
not been dismissed.

1	Event	NVIDIA's Proposed Schedule
2	Hearing on MSJ and <i>Daubert</i> Briefs related to fair use	<i>To be set by the Court</i>
3	Trial	<i>To be set by the Court after MSJ ruling (if required)</i>

4

5 **16. Trial**

6 The parties agree that should the case proceed to trial, it should be tried to a jury. The parties
7 anticipate a 14-day trial.

8 **17. Disclosure of Non-Party Interested Entities or Persons**

9 The *Nazemian* Plaintiffs filed a Certification of Interested Entities or Persons along with the
10 Complaint on March 8, 2024 (*Nazemian* Dkt. 4). The *Dubus* Plaintiffs filed their Certification of
11 Interested Entities or Persons on June 17, 2024 (*Dubus* Dkt. 43).

12 NVIDIA filed a Certification of Interested Entities or Persons on March 28, 2024 in the
13 *Nazemian* case (*Nazemian* Dkt. 26) and on May 31, 2024 in the *Dubus* case (*Dubus* Dkt. 23).

14 **18. Professional Conduct**

15 All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct
16 for the Northern District of California.

17 **19. Other Matters**

18 The parties are not presently aware of other matters that may facilitate the resolution of these
19 cases.

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1 Dated: August 13, 2024

Respectfully submitted,

2 By: /s/ Joseph R. Saveri

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Dated: August 13, 2024

Respectfully Submitted,

By: /s/ Sean S. Pak

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L.R. 5-1 SIGNATURE ATTESTATION

This document is being filed through the Electronic Case Filing (ECF) system by attorney Joseph R. Saveri. By their signature, Joseph R. Saveri attests that he has obtained concurrence in the filing of this document from each of the attorneys identified on the caption page and in the above signature block.

Dated: August 13, 2024

By /s/ Joseph R. Saveri