

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

J. DOE 1, et al.,  
Plaintiffs,  
v.  
GITHUB, INC., et al.,  
Defendants.

Case No. [22-cv-06823-JST](#) (DMR)

**NOTICE OF REFERENCE AND  
ORDER RE: DISCOVERY  
PROCEDURES; ORDER DENYING  
NOVEMBER 15, 2023 DISCOVERY  
LETTER WITHOUT PREJUDICE**

Re: Dkt. No. 173

TO ALL PARTIES AND COUNSEL OF RECORD:

The above matter has been referred to Chief Magistrate Judge Donna M. Ryu for resolution of all discovery matters, including the parties’ November 15, 2023 joint discovery letter in which Plaintiffs Does 1-5 seek to compel Defendant OpenAI’s<sup>1</sup> complete responses to several interrogatories. [Docket No. 173 (“JDL”).] The JDL is denied without prejudice. As a preliminary matter, Plaintiffs complain that OpenAI failed to verify its responses to Plaintiffs’ interrogatories because the person who made the answers did not sign them, in violation of Federal Rule of Civil Procedure 33(b)(5). OpenAI does not respond on this point. OpenAI must comply with Rule 33(b)(5) and serve verified responses by December 5, 2023. With respect to the merits of Plaintiffs’ claims, OpenAI asserts that judicial intervention is not necessary at this time, and that further meet and confer could lead to a compromise. Accordingly, the parties shall meet and confer in compliance with Judge Ryu’s standing order, which requires that meet and confer sessions be in person, by video, or by telephone. If any disputes remain on Plaintiffs’

<sup>1</sup> OpenAI refers to Defendants OpenAI, Inc.; OpenAI, LP; OpenAI OpCo, LLC; OpenAI GP, LLC; OpenAI Startup Fund GP I, LLC; OpenAI Startup Fund I, LP, and Open AI Startup Fund Management, LLC.

1 interrogatories, the parties shall file a joint discovery letter by December 22, 2023. The new filing  
2 must strictly comply with this court’s standing order and may not incorporate by reference any  
3 prior submissions or include footnotes.

4 Parties shall comply with the procedures in this order, the Federal Rules of Civil  
5 Procedure, and the Northern District of California’s Local Rules, General Orders, and Standing  
6 Orders. Local rules, general orders, standing orders, and instructions for using the Court’s  
7 Electronic Case Filing system are available at <http://www.cand.uscourts.gov>. Failure to comply  
8 may result in sanctions.

9 **RESOLUTION OF DISCOVERY DISPUTES**

10 In order to respond to discovery disputes in a flexible, cost-effective and efficient manner,  
11 the court uses the following procedure. The parties shall not file formal discovery motions.  
12 Instead, as required by the federal and local rules, the parties shall first meet and confer to try to  
13 resolve their disagreements. The meet and confer session must be **in person, by video, or by**  
14 **telephone**, and may not be conducted by letter, e-mail, or fax. If disagreements remain, the  
15 parties shall file a joint letter **no later than five business days** after the meet and confer session,  
16 unless otherwise directed by the court. **Lead trial counsel for both parties must sign the letter**,  
17 which shall include an attestation that the parties met and conferred in person, by video, or by  
18 telephone regarding all issues prior to filing the letter. **The letter must also include a paragraph**  
19 **listing relevant case management deadlines**, including (1) the fact and expert discovery cut-off  
20 dates; (2) the last day to hear or file dispositive motions; (3) claim construction or class  
21 certification briefing deadlines and hearing dates; and (4) pretrial conference and trial dates.  
22 Going issue-by-issue, the joint letter shall describe each unresolved issue, summarize each party’s  
23 position with appropriate legal authority, and **provide each party’s final proposed compromise**  
24 **before moving to the next issue**. The joint letter shall not exceed **five pages** (12-point font or  
25 greater; margins no less than one inch) without leave of court. **Parties are expected to plan for**  
26 **and cooperate in preparing the joint letter so that each side has adequate time to address the**  
27 **arguments**. In the rare instance that a joint letter is not possible, each side may submit a letter not  
28 to exceed **two** pages, which shall include an explanation of why a joint letter was not possible.

1 The parties shall submit one exhibit that sets forth each disputed discovery request in full,  
2 followed immediately by the objections and/or responses thereto. No other information shall be  
3 included in the exhibit. No other exhibits shall be submitted without prior court approval. The  
4 court will review the submission(s) and determine whether formal briefing or proceedings are  
5 necessary. **Discovery letter briefs must be e-filed under the Civil Events category of Motions  
6 and Related Filings > Motions - General > “Discovery Letter Brief.”**

7 All exhibits to discovery disputes should be separately filed on ECF (for example, if the  
8 motion is Docket No. 30, and the declaration with 10 exhibits is Docket No. 31, Exhibit A would  
9 be filed as Docket No. 31-1, Exhibit B would be Docket No. 31-2, and so on). **All exhibits shall  
10 also be filed in a searchable OCR format where possible.**

11 The court expects counsel to appear in person at discovery hearings, or on camera if the  
12 hearing is conducted by video. This provides the opportunity to fully engage counsel in resolving  
13 aspects of the dispute. If the court sets an in-person discovery hearing, permission to attend by  
14 telephone may be granted upon advance written request if the court determines that good cause  
15 exists. The facts establishing good cause must be set forth in the request.

16 Litigants and lawyers may provide their pronouns by filing a letter or adding pronouns  
17 next to their names in their filings.

18 The court strongly encourages parties to contribute to the development of the bar by  
19 permitting less experienced lawyers and lawyers from historically under-represented groups to  
20 argue motions.

21 **MOTIONS TO FILE UNDER SEAL**

22 Parties are reminded that court proceedings are presumptively public, and no document  
23 shall be filed under seal without request for a court order that is narrowly tailored to cover only the  
24 document, the particular portion of the document, or category of documents under the governing  
25 standard. If a party wishes to file a document under seal, that party shall first file an  
26 administrative motion to seal in accordance with Local Rule 79-5.

27 The parties need not file paper copies of the administrative motion to seal with the clerk’s  
28 office. The parties only need to submit chambers copies of the administrative motion to seal and

1 related filings. Chambers copies should include all material — both redacted and unredacted —  
2 so that the chambers staff does not have to re-assemble the whole brief or declaration, although  
3 chambers copies should clearly delineate which portions are confidential (via highlighting).  
4 Chambers copies with confidential materials will be handled like all other chambers copies of  
5 materials without special restriction, and will typically be recycled, not shredded. If the parties  
6 wish to dispose of documents filed under seal in some other way, they must expressly indicate as  
7 much in their sealing motion and make arrangements to pick up the documents upon disposition of  
8 the motion.

### 9 **PROTECTIVE ORDERS**

10 If parties believe a protective order is necessary, they shall, where practicable, use one of  
11 the model stipulated protective orders (available at <http://cand.uscourts.gov/model-protective->  
12 orders). Parties shall file one of the following with their proposed protective order: (a) a  
13 declaration stating that the proposed order is identical to one of the model orders except for the  
14 addition of case-identifying information or the elimination of language denoted as optional; (b) a  
15 declaration explaining each modification to the model order, along with a redline version  
16 comparing the proposed protective order with the model order; or (c) a declaration explaining why  
17 use of one of the model orders is not practicable. All protective orders, including the model  
18 protective order, must be modified to reflect Judge Ryu’s standing order on judicial intervention in  
19 discovery disputes. If the parties use one of the model stipulated protective orders, they must  
20 modify section 6.3 by striking the remainder of the section after “If the Parties cannot resolve a  
21 challenge without court intervention” and adding “the Parties shall follow the procedures for  
22 resolving discovery disputes set forth in Magistrate Judge Donna M. Ryu’s standing order and  
23 present the dispute in a joint letter to the court” or words to that effect.

### 24 **CHAMBERS COPIES AND PROPOSED ORDERS**

25 Parties must lodge an extra paper copy of the following filings pursuant to Civil L.R. 5-  
26 1(d)(7): any of the motions listed under Civil L.R. 7-1(a) (except stipulations filed pursuant to  
27 Civil L.R. 7-12), motions for attorneys’ fees filed under Civil L.R. 54-5, motions for temporary  
28 restraining orders filed under Civil L.R. 65-1, and discovery letter briefs. If a District Judge refers

1 a discovery dispute to Judge Ryu for resolution, the parties must lodge a chambers copy of the  
2 referred discovery letter or motion. The filings should be marked as a copy for “**DMR**  
3 **Chambers.**” All chambers copies should be double-sided (when possible), three-hole punched  
4 along the left side of the page, and should bear the ECF filing “stamp” (case number, docket  
5 number, date, and ECF page number) along the top of the page. All exhibits shall be clearly  
6 delineated with labels along the right side. If the filing includes exhibits over two inches thick, the  
7 parties shall place the chambers copy in a binder.

8 Any stipulation or proposed order submitted by an e-filing party shall be submitted by  
9 email to [dmrpo@cand.uscourts.gov](mailto:dmrpo@cand.uscourts.gov) as a word processing attachment on the same day the  
10 document is e-filed. This address should only be used for this stated purpose unless otherwise  
11 directed by the court.

12 **PRIVILEGE LOGS**

13 If a party withholds responsive information by claiming that it is privileged or otherwise  
14 protected from discovery, that party shall produce a privilege log as quickly as possible, but **no**  
15 **later than fourteen days after its disclosures or discovery responses are due**, unless the parties  
16 stipulate to or the court sets another date. Privilege logs must be sufficiently detailed for the  
17 opposing party to assess whether the assertion of privilege is justified. Unless the parties agree to  
18 alternative logging methods, the log should include: (a) the title and description of the document,  
19 including number of pages or Bates-number range; (b) the subject matter addressed in the  
20 document; (c) the identity and position of its author(s); (d) the identity and position of all  
21 addressees and recipients; (e) the date the document was prepared and, if different, the date(s) on  
22 which it was sent to or shared with persons other than its author(s); and (f) the specific basis for  
23 the claim that the document is privileged or protected.

24 //  
25 //  
26 //  
27 //  
28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

//

Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log. Failure to promptly furnish a privilege log may be deemed a waiver of the privilege or protection.

**IT IS SO ORDERED.**

Dated: November 28, 2023



---

BONNA M. RYU  
Chief Magistrate Judge