1 Joseph R. Saveri (State Bar No. 130064)
   Cadio Zirpoli (State Bar No. 179108)
2 Travis Manfredi (State Bar No. 281779)
3 JOSEPH SAVERI LAW FIRM, LLP
   601 California Street, Suite 1000
4 San Francisco, California 94108
   Telephone: (415) 500-6800
5 Facsimile: (415) 395-9940
   Email: jsaveri@saverilawfirm.com
6   czirpoli@saverilawfirm.com
7   tmanfredi@saverilawfirm.com

8 Matthew Butterick (State Bar No. 250953)
9 1920 Hillhurst Avenue, #406
   Los Angeles, CA 90027
10 Telephone: (323) 968-2632
   Facsimile: (415) 395-9940
11 Email: mb@buttericklaw.com

12 *Counsel for Individual and Representative
   Plaintiffs and the Proposed Class*
13

14   **UNITED STATES DISTRICT COURT**

15   **NORTHERN DISTRICT OF CALIFORNIA**

16   **SAN FRANCISCO DIVISION**

17 J. DOE 1 and J. DOE 2, individually and on   Case No.
   behalf of all others similarly situated,
18   **COMPLAINT**
        Individual and Representative Plaintiffs,
19   **CLASS ACTION**
        v.
20
   GITHUB, INC., a Delaware corporation;   **DEMAND FOR JURY TRIAL**
21 MICROSOFT CORPORATION, a Washington
   corporation; OPENAI, INC., a Delaware
22 nonprofit corporation; OPENAI, L.P., a
   Delaware limited partnership; OPENAI GP,
23 L.L.C., a Delaware limited liability company;
   OPENAI STARTUP FUND GP I, L.L.C., a
24 Delaware limited liability company; OPENAI
   STARTUP FUND I, L.P., a Delaware limited
25 partnership; OPENAI STARTUP FUND
   MANAGEMENT, LLC, a Delaware limited
26 liability company,
27
                                 Defendants.

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1   Plaintiffs J. Doe 1 and J. Doe 2 ("Plaintiffs"), on behalf of themselves and all others

2   similarly situated, bring this Class Action Complaint (the "Complaint") against Defendants

3   GitHub, Inc.; Microsoft Corporation; OpenAI, Inc.; OpenAI, L.P.; OpenAI GP, L.L.C.; OpenAI

4   Startup Fund GP I, L.L.C.; OpenAI Startup Fund I, L.P.; and OpenAI Startup Fund

5   Management, LLC[1] for violation of the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201–

6   1205 (the "DMCA"); violation of the Lanham Act, 15 U.S.C. § 1125; violation of Unfair

7   Competition law, *Cal. Bus. & Prof. Code* §§ 17200, *et seq.*; violation of the California Consumer

8   Privacy Act, *Cal. Civ. Code* § 1798.150 (the "CCPA"); and Breach of Contract regarding the

9   Suggested Licenses, GitHub's Privacy Statement, and GitHub's Terms of Service, *Cal. Bus. &*

10 *Prof. Code* §§ 22575–22579, *Cal. Civ. Code* § 1798.150. Plaintiffs and the Class also bring this

11 Complaint against Defendants for their Tortious Interference in Plaintiffs' Contractual

12 Relationships; Fraud, and Negligence regarding handling of sensitive data.

13 **I.   OVERVIEW: A BRAVE NEW WORLD OF SOFTWARE PIRACY**

14   1.   Plaintiffs and the Class are owners of copyright interests in materials made

15 available publicly on GitHub that are subject to various licenses containing conditions for use of

16 those works (the "Licensed Materials."). All the licenses at issue here (the "Licenses") contain

17 certain common terms (the "License Terms").

18   2.   "Artificial Intelligence" is referred to herein as "AI." AI is defined for the

19 purposes of this Complaint as a computer program that algorithmically simulates human

20 reasoning or inference, often using statistical methods. Machine Learning ("ML") is a subset of

21 AI in which the behavior of the program is derived from studying a corpus of material called

22 training data.

23

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25 [1] GitHub, Inc. is referred to as "GitHub." Microsoft Corporation is referred to as "Microsoft."
    OpenAI, Inc.; OpenAI, L.P.; OpenAI GP, L.L.C.; OpenAI Startup Fund GP I, L.L.C.; OpenAI
26 Startup Fund I, L.P.; and OpenAI Startup Fund Management, LLC are referred to collectively
    herein as "OpenAI." Collectively, GitHub, Inc., Microsoft Corporation, OpenAI, Inc.; OpenAI,
27 L.P.; OpenAI GP, L.L.C.; OpenAI Startup Fund GP I, L.L.C.; OpenAI Startup Fund I, L.P.; and

3.   GitHub is a company founded in 2008 by a team of open-source enthusiasts. At the time, GitHub's stated goal was to support open-source development, especially by hosting open-source source code on the website github.com. Over the next 10 years, GitHub, based on these representations succeeded wildly, attracting nearly 25 million developers.

4.   Developers published Licensed Materials on GitHub pursuant to written Licenses. In particular, the most popular ones share a common term: use of the Licensed Materials requires some form of *attribution*, usually by, among other things, including a copy of the license along with the name and copyright notice of the original author.

5.   On October 26, 2018, Microsoft acquired GitHub for $7.5 billion. Though some members of the open-source community were skeptical of this union, Microsoft repeated one mantra throughout: "Microsoft Loves Open Source". For the first few years, Microsoft's representations seemed credible.

6.   Microsoft invested $1 billion in OpenAI LP in July 2019 at a $20 billion valuation. In 2020, Microsoft became exclusive licensee of OpenAI's GPT-3 language model—despite OpenAI's continued claims its products are meant to benefit "humanity" at large. In 2021, Microsoft began offering GPT-3 through its Azure cloud-computing platform. On October 20, 2022, it was reported that OpenAI "is in advanced talks to raise more funding from Microsoft" at that same $20 billion valuation. Copilot runs on Microsoft's Azure platform. Microsoft has used Copilot to promote Azure's processing power, particularly regarding AI.

7.   On information and belief, Microsoft obtained a partial ownership interest in OpenAI in exchange for its $1 billion investment. As OpenAI's largest investor and largest service provider—specifically in connection with Microsoft's Azure product—Microsoft exerts considerable control over OpenAI.

8.   In June 2021, GitHub and OpenAI launched Copilot, an AI-based product that promises to assist software coders by providing or filling in blocks of code using AI. GitHub charges Copilot users $10 per month or $100 per year for this service. Copilot ignores, violates, and removes the Licenses offered by thousands—possibly millions—of software developers,

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