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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

21
22 ANDREA BARTZ, ANDREA BARTZ, INC.,
23 CHARLES GRAEBER, KIRK WALLACE
JOHNSON, and MJ + KJ, INC., individually and
24 on behalf of others similarly situated,

25 Plaintiffs,

26 v.

27 ANTHROPIC PBC,

28 Defendants.

Case No. 3:24-cv-05417-WHA

**PLAINTIFFS' OPPOSITION TO
ANTHROPIC PBC'S
ADMINISTRATIVE MOTION TO
REQUEST A CASE MANAGEMENT
CONFERENCE ON THE ORDERING
OF SUMMARY JUDGMENT AND
CLASS CERTIFICATION MOTIONS**

1 On October 10, 2024, at the initial scheduling conference, Anthropic asked the Court to
2 address summary judgment before class certification. The Court denied the request, expressed
3 skepticism, but told Anthropic it could re-raise the issue. *See* Ex. A at 23:19-24:8. Anthropic did
4 not raise the issue for more than four months. In that time, Plaintiffs have been working diligently
5 to develop the record for class certification, prepare its motion that is now due in less than two
6 weeks, and ultimately be ready for the December 1, 2025 trial date.

7 The Court should deny Anthropic’s request again. The request is untimely—filed well after
8 Plaintiffs have invested time and resources into preparing a motion for class certification. Anthropic
9 also offers no reason why this Court should revisit its previous denial of Anthropic’s request. The
10 current case schedule accords with Rule 23’s mandate that class certification be decided at “an early
11 practicable time” and allows common issues like fair use to be decided *after* a class is certified and
12 a notice and opt-out period. Discovery has confirmed that class certification here will be
13 straightforward and should be decided sooner rather than later. Anthropic’s conduct was common
14 to the class—

15 [REDACTED] Anthropic’s central defense is fair use, and whether Anthropic’s largescale piracy
16 and training is fair use is a common question with a common answer.

17 The schedule the Court set back in October was the right one then and it remains the right
18 one now. The Court should deny Anthropic’s motion. Anthropic has ample opportunity to raise its
19 defenses to Rule 23 in its upcoming class certification opposition, and will have ample opportunity
20 to present its fair use defense at summary judgment later this year. Its eleventh-hour motion to delay
21 class certification briefing pending a yet-to-be-filed motion for summary judgment should be
22 denied.

23 **I. Anthropic’s Motion Should Be Denied As Untimely.**

24 At the October 10, 2024 conference, the Court rejected Anthropic’s request that summary
25 judgment be staged before class certification, but left open the possibility of a change in sequencing
26 later. *See* Ex. A at 23:21-24:8 (“[I]f both sides were to agree . . . not to do class certification until
27 after summary judgment — that’s ridiculous, really. That’s one-way intervention.”). Plaintiffs
28 opposed. The Court scheduled class certification briefing to begin on March 6, 2025.

1 For the next four months, Plaintiffs moved forward with the March 6 deadline as a north
2 star. Plaintiffs prioritized discovery relevant to class certification, retained expert witnesses to opine
3 on class issues, and have already dedicated substantial resources to preparing their class
4 certification motion. Plaintiffs took an early 30(b)(6) deposition about threshold issues relevant to
5 class certification, and the depositions of named Plaintiffs are scheduled to be completed next week.
6 As for written discovery, Plaintiffs have focused on discovery demands likely to be related to class
7 certification. *See* Pltfs. Ltr. Mtn. to Compel Disc. Resps., Dkt. 86. As late as last month when the
8 parties were in front of this Court for the technology tutorial, Anthropic said nothing.

9 Waiting until the eve of class certification briefing, Anthropic now asks to push class
10 certification briefing back five months, to August 7. Accounting for a notice and opt out period
11 after any class is certified, Anthropic’s proposed delay in class certification briefing would likely
12 require a delay of the December trial. Plaintiffs rejected Anthropic’s proposal. Anthropic frames
13 its proposal as an attempt to save resources, but at this late stage, its proposal would have the
14 opposite effect. Discarding these efforts at the eleventh hour “is precisely the type of waste a
15 scheduling order is designed to avoid.” *Zone Sports Ctr., LLC v. Rodriguez*, 2016 WL 224093, at
16 *10 (E.D. Cal. Jan. 19, 2016) (denying motion to amend scheduling order).

17 **II. Class Certification Should Not Be Postponed Until After Summary Judgment Is**
18 **Decided.**

19 Anthropic’s proposal to delay class certification by five months is contrary to Rule 23,
20 which directs the court to decide class certification “[a]t an early practicable time after a person
21 sues or is sued as a class representative.” Fed. R. Civ. P. 23(c)(1)(A). In the context of this case,
22 Anthropic’s proposed schedule turns that requirement on its head, scheduling class certification not
23 only after dispositive motions, but less than two months before the pretrial conference, leaving
24 insufficient time to provide notice to absent class members and an opt-out period.

25 This Court’s rules reinforce why class certification should be decided at an early practicable
26 time in this case. The Court has instructed the parties that there should be “[n]o talking of settlement
27 until we make sure there’s a class.” Ex. A at 16:14-15.

28 Postponing class certification is especially inefficient here because class certification in this

1 case will be more straightforward than most. The claims of every class member will rise or fall on
2 two largescale common practices: [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 [REDACTED] Because Anthropic treated all these books the same [REDACTED]

11 [REDACTED]

12 [REDACTED] the central questions of law and fact about Anthropic’s conduct,
13 whether it was willful, and whether it was fair use are all common to the class. Courts consistently
14 grant class certification in copyright cases where, as here, a defendant’s common course of conduct
15 allegedly infringed a large group of works. *In re Napster, Inc. Copyright Litig.*, No. 3:00-md-1369,
16 2005 WL 1287611, at *12 (N.D. Cal. June 1, 2005); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*,
17 No. 13-cv-5693, 2015 WL 4776932, at *17 (C.D. Cal. May 27, 2015).

18 The cases Anthropic cites only further illustrate why class certification is appropriate here.
19 For example, in *Schneider v. YouTube, LLC*, 674 F. Supp. 3d 704, 717, 720 (N.D. Cal. 2023), class
20 certification was denied because there were individualized questions for each audiovisual work
21 regarding whether there was a video uploaded to YouTube video that was substantially similar
22 enough to have infringed. *Id.* Here, whether any class member can establish a *prima facie* case of
23 infringement depends on Anthropic’s common records, namely, its training datasets that can easily
24 be queried to determine which books were downloaded and used for LLM training. And because,
25 as Anthropic admits, this case is only about Anthropic’s illegal downloading and training copies of
26 class works (*i.e.*, the inputs to Anthropic’s LLMs), there will be no similar issue about substantial
27

28 [REDACTED]
[REDACTED]
[REDACTED]

1 similarity, for example, to assess whether the *outputs* of Anthropic’s LLMs are infringing.

2 Anthropic also cites *Kadrey v. Meta Platforms, Inc.*, No. 3:23-cv-03417-VC (N.D. Cal.),
 3 but in that case, Judge Chhabria put summary judgment first at the outset of the case, before any
 4 discovery was underway and before the plaintiffs had put significant resources into preparing a
 5 motion for class certification. *See* Anthropic’s Ex. C at 6:8-14; *but see Tremblay v. OpenAI*, 3:23-
 6 cv-03223-AMO (N.D. Cal) (sequencing class certification first).² Anthropic’s cited cases only
 7 confirm why its last-minute proposal to change the case schedule should be denied.

8 Finally, while Anthropic says it will waive the protection of the one-way intervention rule,
 9 *cf. Schwarzschild v. Tse*, 69 F.3d 293, 295-96 (9th Cir. 1995), this does not cure the prejudice
 10 Plaintiffs will suffer from a delay to class certification briefing that will almost certainly jeopardize
 11 the trial date if class certification is granted.

12 **III. Staging Summary Judgment First Is Inefficient.**

13 Anthropic says that staging summary judgment on fair use first may “moot” the remainder
 14 of this litigation. Anthropic’s fair use defense is highly unlikely to succeed. [REDACTED]

15 [REDACTED]
 16 [REDACTED] Courts have long held that
 17 “exploitative unauthorized cop[ying] of copyrighted works” in order “to save the expense of
 18 purchasing authorized copies” is not fair use. *A&M Records v. Napster, Inc.*, 239 F.3d 1004, 1015
 19 (9th Cir. 2001); *see also UMG Recordings, Inc. v. MP3.Com, Inc.*, 92 F. Supp. 2d 349, 350
 20 (S.D.N.Y. 2000) (denying fair use where Defendant “copied, without authorization, from plaintiffs’
 21 copyrighted CDs”). [REDACTED]

22 [REDACTED]
 23 [REDACTED]
 24
 25 ² The five-paragraph *per curiam* opinion in *Authors Guild v. Google, Inc.*, 721 F.3d 132, 134 (2d
 26 Cir. 2013), is equally irrelevant because the underlying litigation involved questions of substantial
 27 similarity not at issue here. Nor is the *Authors Guild* opinion—which itself “test[ed] the boundaries
 28 of fair use,” *Authors Guild v. Google, Inc.*, 804 F.3d 202, 206 (2d Cir. 2015)—interpreted to permit
 piracy or unlicensed LLM training. *See Hachette Book Grp., Inc. v. Internet Archive*, 664 F. Supp.
 3d 370, 380-81, 391 (S.D.N.Y. 2023) (distinguishing *Google Books* and finding Internet Archive’s
 unlicensed copying and distribution of books not to be fair use); *Thomson Reuters v. Ross
 Intelligence*, 2025 WL 458520, at *10 (D. Del. Feb. 11, 2025) (Bibas, J.) (finding that use of
 copyrighted material to train an AI model was not transformative and not fair use).

1 Anthropic’s fair use defense for the subsequent copies it made of class members’ works to
2 train its LLMs is equally meritless. *See, e.g., Am. Geophysical Union v. Texaco Inc.*, 60 F.3d 913,
3 916 (2d Cir. 1994) (holding that Texaco’s “institutional, systematic copying [to] increase[] the
4 number of copies available to scientists while avoiding the necessity of paying for license fees or
5 for additional subscriptions” was not fair use). In fact, just two weeks ago, in *Thomson Reuters v.*
6 *Ross Intelligence*, Judge Bibas held that the reproduction of Westlaw headnotes to train an AI model
7 was not fair use. 2025 WL 458520, at *10 (D. Del. Feb. 11, 2025) (Bibas, J.). [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 * * *

13 The time for Anthropic to request reconsideration of the staging of class certification and
14 summary judgment has long passed. The most efficient course for the class and the case is to keep
15 the current schedule and trial date. Plaintiffs are hard at work preparing their motion for class
16 certification, and because putting summary judgment first in this action will not increase efficiency
17 or judicial economy, this Court should deny Anthropic’s request.

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Dated: February 24, 2025

By: /s/ Rohit D. Nath

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