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19 **(Pro Hac Vice)*

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN FRANCISCO DIVISION

23 ANDREA BARTZ, ET AL.,
24 Plaintiffs,
25 v.
26 ANTHROPIC PBC,
27 Defendant.
28

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

**PLAINTIFFS' SUPPLEMENTAL
BRIEFING REGARDING CLASS
DEFINITION AND NOTICE (DKT. 199)**

1 **I. The Court’s Proposed Class Definitions Satisfy Rule 23.**

2 The Court’s proposed class definitions comply with Rule 23 and are objectively defined.
 3 Plaintiffs understand the terms in the Court’s proposed classes as follows: (1) “**Registered**
 4 **owners**” refers to owners of a registered copyright who are listed on the copyright registration
 5 maintained by the United States Copyright Office. The registered owner is typically listed as the
 6 “copyright claimant” on a registration certificate; (2) “**Books3, PiLiMi, or LibGen**” refers to the
 7 versions of those datasets that Anthropic downloaded; (3) “**Scanned List**” refers to the list of
 8 books purchased and scanned as part of Anthropic’s Books Scanning Project. *See* Dkt. No. 125-
 9 12 (Ex. 30) (named plaintiff registrations); Dkt. No. 125-6 (Zhao Decl.) ¶¶ 42–68.

10 These class definitions encompass all of the named Plaintiffs’ asserted works in this case,
 11 though not every single one of the named Plaintiffs. *See* Dkt. No. 125-12 (Ex. 30) (named
 12 plaintiff registrations). Three named Plaintiffs—Andrea Bartz’s loan-out company (Andrea
 13 Bartz, Inc.), Kirk Wallace Johnson’s loan-out company (MJ+KJ, Inc.), and Charles Graeber—are
 14 registered owners of asserted works and therefore in the Court’s proposed definitions. Named
 15 plaintiffs Ms. Bartz herself and Mr. Johnson himself are not within the Court’s proposed
 16 definitions, as they are not the listed as copyright claimant on the current registration certificate.
 17 But for each named Plaintiffs’ asserted work, either the author or his or her loan-out company is
 18 the registered owner of the relevant work. *See id.*

19 **II. Minor Modifications to the Court’s Definitions Add Clarity and Conform to Statute.**

20 Plaintiffs offer four revisions to the Court’s definitions.

21 *First*, the Court should consider limiting the definitions to encompass: (1) only works
 22 where the copyrights were registered with the United States Copyright Office within five years of
 23 the work’s publication, *see* 17 U.S.C. § 410(c), and (2) of those works, only those where the work
 24 was registered before Anthropic either downloaded / scanned the work or within three months of
 25 publication, *see* 17 U.S.C. § 412. Registrations for works that fit the first limitation usually enjoy
 26 a presumption of ownership and validity, and works that fit the second limitation are eligible for
 27 statutory damages. These limitations correspond to parts (a) and (b) of Plaintiffs’ proposed class
 28 definitions, *see* Pls. Mtn. ISO Class Cert., Dkt. No. 121, at 1, and these dates are present on the

1 face of the copyright registrations, *see, e.g.*, Dkt. No. 125-12 (Ex. 30).

2 **Second**, Plaintiffs believe that the Court should limit “books” to works with an ISBN or
3 ASIN. This is not necessary, but will aid in notice and identification of class works in Anthropic’s
4 metadata. ISBNs are also listed on copyright registrations, further aiding in identification and
5 notice. This limitation corresponds to part (c) of Plaintiffs’ proposed class definitions. *See* Pls.
6 Mtn. ISO Class Cert., Dkt. No. 121, at 1.

7 **Third**, the definitions should not reference the right “to prepare derivative works.” Dkt.
8 No. 199. Plaintiffs’ infringement claims are predicated on Anthropic’s unauthorized reproduction
9 (17 U.S.C. § 106(1)); Plaintiffs are not alleging infringement by Anthropic of any right to prepare
10 derivative works (*id.* at § 106(2)). *See* Tr. of May 15, 2025 Hearing at 14-22, 25-27, 29-32, 40-
11 41; “AI Licensing for Authors: Who Owns the Rights and What’s a Fair Split?,” *Authors Guild*
12 (Dec. 12, 2024), [https://authorsguild.org/news/ai-licensing-for-authors-who-owns-the-rights-and-](https://authorsguild.org/news/ai-licensing-for-authors-who-owns-the-rights-and-whats-a-fair-split/)
13 [whats-a-fair-split/](https://authorsguild.org/news/ai-licensing-for-authors-who-owns-the-rights-and-whats-a-fair-split/). Anthropic’s own expert admits that the authors and publishers appear to agree
14 that the authors have the right to license for AI training. *See* Peterson Decl. at ¶ 50.

15 **Fourth**, the Court should exclude the term “generic copyright,” as the term is not in the
16 statute or used in the industry. Similarly, the phrase “the right to copy and reproduce,” while the
17 right at issue in this case (17 U.S.C. § 106(1)), is unnecessary because there is a single
18 registration and a single copyright in each work. *See* 3 Nimmer on Copyright § 10.02 (2025)
19 (“there is but one copyright in a work regardless of whether and how many exclusive licenses of
20 particular rights thereunder have been granted”). Plaintiffs had proposed definitions that included
21 all “legal or beneficial owners” in order to mirror the language in the statute regarding which
22 owners may sue, *see* 17 U.S.C. § 501(b); that language would also satisfy Rule 23. *See* Dkt. Nos.
23 121, 172.

24 With these clarifications, the Modified Classes appear as follows:

25 (1) All registered owners of a copyright for any book included in the versions
26 of Books3, PiLiMi, or LibGen downloaded by Anthropic. “Book” refers to any work possessing
27 an ISBN or ASIN which was registered with the United States Copyright Office within five years
28 of the work’s publication and which was registered with the United States Copyright Office

1 before being downloaded by Anthropic, or within three months of publication.

2 (2) All registered owners of a copyright for any book included in the list of books
3 purchased and scanned as part of Anthropic’s Book Scanning Project. “Book” refers to any work
4 possessing an ISBN or ASIN which was registered with the United States Copyright Office
5 within five years of the work’s publication and which was registered with the United States
6 Copyright Office before being scanned by Anthropic, or within three months of publication.

7 **III. Notice to Class Members Is Practicable.**

8 Rule 23 requires “the best notice that is practicable under the circumstances” *In re Apple*
9 *Inc. Device Performance Litig.*, 50 F.4th 769, 779 (9th Cir. 2022) (cleaned up). Here, practicable
10 notice can issue to the Proposed Classes via a targeted notice plan taking advantage of the best
11 methods to contact copyright owners—direct electronic notice facilitated by trade groups and
12 publishers—and additional publication notice and a searchable website.

13 **First**, the Court should revise the notice procedure to clarify that the claims of any owners
14 who are not listed on the registrations are *not* extinguished for failure to amend their registrations.
15 As noted in Plaintiffs’ filing regarding the Court’s question on double recovery, there is no risk of
16 double recovery as any legal or beneficial owners not reflected on the registration could seek their
17 fair share from the recovering registered owner. *See* Dkt. 200.

18 **Second**, there is a high probability that targeted notice would reach more than eighty
19 percent of the proposed Classes—especially when facilitated by publishers, trade groups, and
20 other organizations. *See* Federal Judicial Center, Judges’ Class Action Notice and Claims Process
21 Checklist & Plain Language Guide 3 (2010) (“It is reasonable to reach between 70–95%.”). The
22 publishing industry is highly concentrated. The Association of American Publishers (AAP) alone
23 has 140 publishers (who in turn cover the vast majority of books), *see* [https://publishers.org/who-](https://publishers.org/who-we-are/our-members/)
24 [we-are/our-members/](https://publishers.org/who-we-are/our-members/); publishers who are members of the Independent Book Publishers
25 Association (IBPA), *see* <https://www.ibpa-online.org/page/membership>, and Copyright Clearance
26 Center (CCC) likely cover any remaining. Within these umbrella groups, the Big Five publishers
27 account for 80 percent of trade book market, [https://wordstrated.com/the-big-five-publishers-](https://wordstrated.com/the-big-five-publishers-statistics/)
28 [statistics/](https://wordstrated.com/the-big-five-publishers-statistics/). Authors’ trade groups are similarly concentrated through the Authors Guild (with over

1 16,000 members), and genre-focused authors' groups with direct reach to more than 50,000
2 authors through their websites, newsletters, email lists, and social media channels. The Authors
3 Guild sends communications to approximately 280,000 addresses electronically. These
4 organizations have an established track record of facilitating notice for large copyrights class
5 actions. *See In re Napster, Inc. Copyright Litig.*, No. c-mdl-00-1369 (N.D. Cal.), Dkt. 1304 ¶¶
6 13–14 (notice sent to 8,000 “Top Publishers” on Harry Fox Agency’s list and posted on the
7 agency and trade association’s websites). Plaintiffs have conferred with notice administrators to
8 confirm that high-reach electronic notice is also practicable here.

9 **Third**, electronic notice best reflects how authors work, communicate, and receive
10 important copyright information, including royalty statements. Mailed notice used to be called
11 the gold standard. But, like gold, mailed notice is now unduly expensive, rarely used, and
12 surpassed by more efficient and cost-effective alternatives. That is why Rule 23 directs courts and
13 counsel to “employ new technology to make notice more effective.” *See* 2018 Advisory
14 Committee Notes. *See, e.g., In re Facebook Internet Tracking Litig.*, No. 5:12-MD-02314-EJD,
15 2022 WL 16902426, at *5 (N.D. Cal. Nov. 10, 2022), *aff’d sub nom.* 2024 WL 700985 (9th Cir.
16 Feb. 21, 2024) (“direct email notice” is the “best notice practicable and reasonably calculated to
17 apprise Class Members”). Here, electronic notice will reach more Class members and be more
18 effective than spending millions of dollars on first-class mailed notice. That notice will be
19 amplified by the huge press coverage and intense author interest in this case. Any mailing
20 addresses maintained by the Copyright Office website for Class works from after 1978, which
21 Plaintiffs can supplement information for pre-1978 works or outdated addresses through industry
22 outreach to publishers and trade groups as set out above, can be converted to more-effective email
23 addresses using class notice administrator databases.

24 **Fourth**, a searchable notice website listing all pirated and scanned books used by
25 Anthropic by author, title, and ISBN or ASIN is practical and effective. To the extent Anthropic
26 argues any metadata is incorrect or missing, the methods deployed by Anthropic in its ordinary
27 course of business (*see* Dkt. 191-3 (testifying to a lookup database)) or the Zhao method (*see* Dkt.
28 125-6), can be used to confirm the presence of a given book in Anthropic’s datasets, including by

1 comparing against the actual training datasets themselves.

2 **IV. Conclusion.**

3 Because a class certification order “may be altered or amended before final judgment,”
4 Fed. R. Civ. P. 23(c)(1)(C), the Court has broad discretion to change the Proposed Classes now,
5 or certify Plaintiffs’ proposed classes and make changes later. For any class, ownership is
6 ascertainable based on the copyright registration. In the rare event that an ownership dispute
7 occurs, that dispute will turn on the written contract transferring rights between the parties. *See* 17
8 U.S.C § 204(a) (valid transfers of copyright ownership must be in writing). Class member
9 identification here will be no more difficult than any other action where courts, Rule 53 special
10 masters, or class action administrators routinely determine the owner of the legal claim at issue
11 based on objective criteria. Addressing these issues in one fell swoop is a feature, not a bug of
12 the class action device. As courts have noted in vastly larger consumer cases, “the more
13 claimants there are, the more likely a class action is to yield substantial economies in litigation.”
14 *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013).

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17 Dated: May 20, 2025

Respectfully submitted,

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