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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CONCORD MUSIC GROUP, INC., ET AL.,

Plaintiffs,

v.

ANTHROPIC PBC,

Defendant.

Case Number: 5:24-cv-03811-EKL-SVK

**PUBLISHERS' RESPONSE TO
DECLARATION OF IVANA
DUKANOVIC RELATED TO ECF
NO. 365**

Judge Eumi K. Lee
Magistrate Judge Susan van Keulen

1 Publishers file this brief response to the Declaration of Anthropic’s Counsel Ivana
2 Dukanovic Related to ECF No. 365 (“Dukanovic Declaration”), ECF No. 371.

3 Although Anthropic seeks to downplay the false Claude-generated information contained
4 in the sworn Chen Declaration, ECF No. 341-2, as “an honest citation mistake,” there is ultimately
5 no dispute that the Chen Declaration contained hallucinations generated by Claude—including a
6 citation fabricating the authors and title of a non-existent article. While there remain many
7 questions about the Chen Declaration, the Dukanovic Declaration confirms several facts, including
8 (1) Anthropic’s counsel used Claude.ai to draft citations for the Chen Declaration; (2) Claude
9 generated false information regarding at least three sources cited in the Chen Declaration,
10 including fabricating entirely the authors and title of an article that does not exist; and (3) this false
11 Claude-generated information was ultimately included in the Chen Declaration, and then relied
12 upon in Anthropic’s discovery dispute filing. *See* ECF Nos. 341 at 6-10, 341-2. These facts alone
13 fatally undermine the reliability of the Chen Declaration and Anthropic’s position in the discovery
14 dispute more broadly, while also revealing violations of Judge Lee’s Standing Order (Sec. VIII.G).

15 What we do not yet know is how Ms. Chen prepared her declaration. The hearsay
16 statements in the Dukanovic Declaration are neither competent nor sufficient to answer basic
17 questions about how Ms. Chen conducted the analysis contained in her declaration, the extent to
18 which she utilized Claude, whether she reviewed and relied upon the fabricated Claude-generated
19 information contained in her declaration, and how the fact that Claude hallucinated this
20 information impacts her opinions. These questions are especially important given that the separate
21 article Anthropic now points to in its counsel’s declaration as the “correct” article references a
22 margin of error rate of anywhere between 10% and 50%—not the 25% margin of error proposed
23 in the Chen Declaration as a settled standard. Particularly where Anthropic has argued to the Court
24 that a 25% margin of error is “widely accepted for extremely rare events,” ECF No. 341 at 7-8,
25 Publishers do not agree that the newly identified article “supports the proposition expressed in [the
26 Chen Declaration] with respect to the appropriate margin of error,” ECF No. 371 ¶ 7.

1 We also do not know how it is possible that, if Anthropic’s counsel indeed fed details into
2 Claude about the linked article, Claude could have completely ignored those details and
3 hallucinated something that does not exist at all. As the Court stated at the May 13, 2025 hearing,
4 “there is a world of difference between a missed citation and a hallucination generated by AI, and
5 everyone on this call knows that.” Hr’g Tr. at 16:24–17:3 (May 13, 2025).

6 As indicated at the hearing, Publishers believe that Ms. Chen’s declaration should be
7 excluded or stricken in full. *See, e.g., Kohls v. Ellison*, No. 24-CV-3754 (LMP/DLM), 2025 WL
8 66514 at *1–5 (D. Minn. Jan. 10, 2025) (where the defendant’s expert submitted a declaration that
9 “inadvertently included citations to two non-existent academic articles, and incorrectly cited the
10 authors of a third article,” due to the use of a generative AI tool in drafting the declaration, finding
11 that, “even if the errors were an innocent mistake, and even if the propositions are substantively
12 accurate, the fact remains that [the expert] submitted a declaration made under penalty of perjury
13 with fake citations,” which “shatters his credibility with this Court,” and therefore excluding the
14 expert’s declaration in full); *see also, e.g., United States v. Hayes*, No. 2:24-cr-0280-DJC, 2025
15 WL 235531 at *1071 (E.D. Cal. Jan. 17, 2025) (noting that “[c]ourts across the country have issued
16 sanctions against attorneys . . . for submitting fictitious case citations, fictitious quotations, and
17 related misrepresentations to the court,” including “striking the filing containing the fictitious
18 citations”) (collecting cases); *Jacquelyn “Jackie” Lacey et al., v. State Farm Gen. Ins. Co.*, No.
19 CV 24-5205 FMO (MAAX), 2025 WL 1363069, at *1, *5 (C.D. Cal. May 6, 2025) (Special Master
20 opinion striking briefs containing “bogus AI-generated research,” and stating that
21 “[s]trong deterrence is needed to make sure that attorneys don’t succumb to this easy shortcut”).

22 This presents a “very serious and grave issue,” as the Court indicated at the May 13, 2025
23 hearing. Hr’g Tr. at 16:24–17:3 (May 13, 2025). “When attorneys and experts abdicate their
24 independent judgment and critical thinking skills in favor of ready-made, AI-generated answers,
25 the quality of our legal profession and the Court’s decisional process suffer.” *Kohls*, 2025 WL
26 66514 at *4.

1 Dated: May 16, 2025

Respectfully submitted,

2 /s/ Timothy Chung

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