

1 COOLEY LLP  
KATHLEEN R. HARTNETT (314267)  
2 (khartnett@cooley.com)  
3 3 Embarcadero Center  
20th Floor  
San Francisco, CA 94111-4004  
4 Telephone: (415) 693-2000  
Facsimile: (415) 693 2222

MORRISON & FOERSTER LLP  
Daralyn J. Durie (169825)  
(Ddurie@mofo.com)  
425 Market Street  
San Francisco, CA 94105-2482  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

5 ARNOLD & PORTER KAYE SCHOLER LLP  
6 DOUGLAS A. WINTHROP (183532)  
(Douglas.Winthrop@arnoldporter.com)  
7 JOSEPH FARRIS (263405)  
(Joseph.Farris@arnoldporter.com)  
8 Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111-4024  
9 Telephone: (415) 471-3100  
Facsimile: (415) 471-3400

MORRISON & FOERSTER LLP  
Whitney R. O’Byrne (325698)  
(WOByrne@mofo.com)  
707 Wilshire Boulevard, Suite 6000  
Los Angeles, CA 90017-3543  
Telephone: (213) 892-5200  
Facsimile: (213) 892-5454

10  
11 Attorneys for Defendant  
ANTHROPIC PBC

Attorneys for Defendant  
ANTHROPIC PBC

12 (Additional Counsel on Next Page)

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17 ANDREA BARTZ, CHARLES GRAEBER,  
and KIRK WALLACE JOHNSON,

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

18 Plaintiffs,

Action Filed: August 19, 2024

19 v.

**DEFENDANT ANTHROPIC PBC’S MOTION  
FOR STAY**

20 ANTHROPIC PBC,

Hearing Date: August 28, 2025

21 Defendant.

Hearing Time: 8:00 a.m.

Judge: Honorable William H. Alsup

1 COOLEY LLP  
EPHRAIM MCDOWELL (*pro hac vice*)  
2 (emcdowell@cooley.com)  
ALEXANDER J. KASNER (310637)  
3 (akasner@cooley.com)  
1299 Pennsylvania Avenue NW  
4 Suite 700  
Washington, DC 20004-2400  
5 Telephone: (202) 842-7800  
Facsimile: (202) 842-7899

MORRISON & FOERSTER LLP  
Ramsey W. Fisher (334228)  
(RamseyFisher@mofocom)  
Jackson Lane (351633)  
(jlane@mofocom)  
425 Market Street  
San Francisco, CA 94105-2482  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

6  
7 ARNOLD PORTER & KAYE SCHOLER LLP  
JESSICA L. GILLOTTE (333517)  
(Jessica.Gillotte@arnoldporter.com)  
8 ESTAYVAINE BRAGG (341400)  
(Estayvaine.Bragg@arnoldporter.com)  
9 Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111-4024  
10 Telephone: (415) 471-3100  
11 Facsimile: (415) 471-3400

MORRISON & FOERSTER LLP  
Fitz Beckwith Collings (*pro hac vice*)  
(fcollings@mofocom)  
Mary Prendergast (272737)  
(MPrendergast@mofocom)  
Aditya Vijay Kamdar (324567)  
(AKamdar@mofocom)  
2100 L Street, N.W.  
Washington, DC 20037  
Telephone: (202) 887-1500  
Facsimile: (202) 887-0763

12 LEX LUMINA LLP  
13 MARK LEMLEY (155830)  
(mlemley@lex-lumina.com)  
14 700 S. Flower Street, Suite 1000  
Los Angeles, CA 90017  
15 Telephone: (213) 600-6063

16 Attorneys for Defendant  
17 ANTHROPIC PBC

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**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE THAT**, on August 28, 2025, at 8:00 a.m., or as soon thereafter as may be heard, Defendant Anthropic PBC (“Anthropic”) will and hereby does move this Court for an order staying these proceedings pending the Ninth Circuit’s resolution of Anthropic’s forthcoming Federal Rule of Civil Procedure 23(f) petition for permission to appeal this Court’s order granting class certification (ECF No. 244, or the “Class Certification Order”), to be filed with the Ninth Circuit by July 31, 2025, and any subsequent appeal; and, additionally, for an order staying these proceedings if the Court certifies the order denying in part Anthropic’s motion for summary judgment (ECF No. 231, or the “Summary Judgment Order”) for interlocutory appeal under 28 U.S.C. § 1292(b), which is set for hearing by the Court on August 28, 2025. This motion is based on this Notice of Motion and Motion, Memorandum of Points and Authorities, the papers on file in this action, and such other and further evidence or argument that the Court may consider.

**STATEMENT OF ISSUES TO BE DECIDED**

Whether the Court should stay these proceedings pending the Ninth Circuit’s resolution of Anthropic’s forthcoming Rule 23(f) petition and any subsequent appeal, and if the Court certifies the Summary Judgment Order for interlocutory appeal under 28 U.S.C. § 1292(b).

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This case is one of many putative class actions against leading technology companies for alleged copyright infringement related to the development of revolutionary generative artificial intelligence technology.<sup>1</sup> Each case turns on how the fair use defense applies to the training of large language models (LLMs), including on datasets from so-called “pirate” websites. Late last

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<sup>1</sup> See, e.g., *Denial et al. v. OpenAI, Inc. et al.*, No. 25-cv-05495 (N.D. Cal. June 30, 2025); *Bird v. Microsoft Corp.*, No. 25-cv-05282, (S.D.N.Y. June 24, 2025); *In re Mosaic LLM Litig.*, No. 24-cv-01451 (N.D. Cal. Mar. 8, 2024); *Nazemian v. NVIDIA Corp.*, No. 24-cv-01454 (N.D. Cal. Mar. 8, 2024); *Authors Guild v. OpenAI Inc.*, No. 23-cv-08292 (S.D.N.Y. Sept. 19, 2023), MDL No. 3143; *In re Google Generative AI Copyright Litig.*, No. 23-cv-03440 (N.D. Cal. July 11, 2023); *Kadrey v. Meta Platforms, Inc.*, No. 23-cv-03417, (N.D. Cal. July 7, 2023); *Tremblay v. OpenAI, Inc.*, No. 25-cv-03482 (S.D.N.Y. June 28, 2023), MDL No. 3143.

1 month, the Court issued a Summary Judgment Order reaching novel legal conclusions on these  
2 topics that starkly conflict with a summary judgment ruling in another case in the District. And  
3 just last week, the Court certified a massive and uncertain damages class, likely numbering in the  
4 millions, and ordered a novel notice plan that, among other things, involves class members  
5 identifying and giving notice to competing class members. To date, the Court has made clear it  
6 intends to hold trial under this framework in just four months, thereby exposing Anthropic to  
7 potentially billions of dollars in liability.

8 The Court should issue a stay pending potential appellate guidance on the weighty issues  
9 presented, particularly given the potentially profound and unfair harm to Anthropic from further  
10 litigation and a trial under the present framework. By July 31, 2025, Anthropic will file a Rule  
11 23(f) petition in the Ninth Circuit seeking permission to appeal this Court’s Class Certification  
12 Order. The Ninth Circuit typically takes about three months to rule on a Rule 23(f) petition,  
13 although in some cases takes over 120 days to do so, meaning that Anthropic’s petition may not be  
14 resolved until near, during, or after the December 1 trial date.<sup>2</sup>

15 Absent the requested stay, the parties will be required to complete discovery, pre-trial  
16 preparations, class notice and opt-out procedures and potentially trial—all while the Ninth Circuit  
17 considers an appeal of core legal issues that could end or significantly change this litigation. Courts,  
18 including this one, have not hesitated to issue stays pending resolution of Rule 23(f) petitions and  
19 when certifying questions for interlocutory appeal pursuant to Section 1292(b). If this Court denies  
20 a stay, Anthropic intends to seek one from the Ninth Circuit in conjunction with its Rule 23(f)  
21 petition, in order to pause these proceedings and avoid wasted resources while the Ninth Circuit  
22 decides whether to grant review.

23 The applicable factors all weigh strongly in favor of a stay. First, Anthropic’s Rule 23(f)  
24 petition has—at a minimum—the required fair prospect of success. The Class Certification Order  
25 involves “an unsettled and fundamental issue of law relating to class actions” and also creates a  
26 likely “death-knell situation” for this litigation, because Anthropic may be forced into settlement

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28 <sup>2</sup> Joseph R. Palmore, *How Do Rule 23(f) Petitions Fare in the Ninth Circuit?*, Morrison Foerster  
(June 30, 2022), <https://classdismissed.mofo.com/topics/how-do-rule-23f-petitions-fare-in-the-ninth-circuit-camt>.

1 negotiations regardless of the strength of its case. *Chamberlan v. Ford Motor Co.*, 402 F.3d 952,  
2 959 (9th Cir. 2005). Anthropic’s motion to certify the Summary Judgment Order for interlocutory  
3 appeal under Section 1292(b) likewise has at least the required fair prospect of success, given that  
4 it presents controlling questions of law on which reasonable jurists in this District have disagreed.

5 Second, Anthropic will be irreparably injured absent a stay, as potentially millions of people  
6 and companies will receive class notice that may need to be retracted or modified substantially,  
7 creating confusion among potential plaintiffs and inflicting reputational harms on Anthropic that  
8 cannot be unwound. All parties also will be irreparably injured by the significant additional  
9 litigation that will occur in the coming months absent a stay—all of which may need to be redone.

10 Third, a stay would not substantially injure Plaintiffs, who seek monetary damages and can  
11 continue to do so if they prevail on appeal.

12 Finally, the public interest weighs in favor of a stay. If either of this Court’s orders is  
13 reversed or revised on appeal, any discovery, class notice, and trial that took place during appeal  
14 may well need to be undone or redone, rendering fruitless the time and effort of jurors, class  
15 members, the Court, and the parties. Moreover, the groundbreaking legal issues presented by this  
16 case and the many others like it should be resolved in a fair and orderly fashion by the Court of  
17 Appeals before a class trial here, which carries the specter of unprecedented and potentially  
18 business-threatening statutory damages against the smallest one of the many companies developing  
19 LLMs with the same books data. In short, the public interest would be well-served by a stay that  
20 allows this and similar cases to proceed with appellate guidance.

## 21 **II. BACKGROUND**

22 On July 14, 2025, Anthropic filed a motion seeking to certify the Summary Judgment Order  
23 for interlocutory appeal under 28 U.S.C. § 1292(b), or, in the alternative, for leave to move for  
24 reconsideration of the Summary Judgment Order under Northern District of California Civil Local  
25 Rule 7-9. *See* ECF No. 241.<sup>3</sup> The certification motion is set for hearing before this Court on August  
26 28, 2025. On July 17, 2025, this Court granted Plaintiffs’ motion for class certification as to the  
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28 <sup>3</sup> Further background and context for Anthropic’s certification motion is contained in that motion.  
*See* ECF No. 241.

1 “LibGen & PiLiMi Pirated Books Class.” *See* ECF No. 244. By July 31, 2025, Anthropic will file  
 2 a Rule 23(f) petition in the Ninth Circuit seeking permission to appeal the Court’s Class  
 3 Certification Order.

4 Litigation is proceeding quickly toward a December 1, 2025 trial. Fact discovery is set to  
 5 close on August 29, 2025; expert discovery is set to commence with opening expert reports on  
 6 August 29, 2025; motions related to fact discovery must be filed by September 5, 2025; opposition  
 7 expert reports must be disclosed by September 12, 2025; reply expert reports must be disclosed by  
 8 September 19, 2025; dispositive motions must be filed by October 1, 2025; expert discovery is set  
 9 to close on October 3, 2025; motions related to expert discovery must be filed by October 10, 2025;  
 10 and the final pre-trial conference is scheduled for November 19, 2025.

11 In addition, the parties now must carry out the notice procedures set forth in the Class  
 12 Certification Order. By August 15, 2025, both parties must “submit a single agreed-on proposed  
 13 form of notice” and “a plan for distribution of notice.” Class Certification Order at 30. And by  
 14 September 1, 2025, Plaintiffs must produce “a per work list in the form of a CD with a table having  
 15 columns for title, author, publisher, copyright registration number, copyright-registered author,”  
 16 “copyright-registered claimant,” and “ISBN and/or ASIN.” *Id.* at 16-17. Absent an issue with  
 17 Plaintiffs’ September 1, 2025 submission, presumably the Court will thereafter direct that class  
 18 notice be disseminated.<sup>4</sup>

### 19 III. ARGUMENT

20 District courts and courts of appeals routinely grant stays pending resolution of a Rule 23(f)  
 21 petition and appeal. *See, e.g., Patel v. Facebook, Inc.*, No. 18-80053, ECF No. 24 (9th Cir. May  
 22 29, 2018); *Solano v. Kroger Co.*, 2024 WL 5245561, at \*4 (D. Or. Nov. 18, 2024); *Romero v.*  
 23 *Securus Techs., Inc.*, 383 F. Supp. 3d 1069, 1077 (S.D. Cal. 2019); *Senne v. Kansas City Royals*  
 24 *Baseball Corp.*, 2017 WL 5973487, at \*4 (N.D. Cal. May 5, 2017); *Brown v. Wal-Mart Stores,*  
 25 *Inc.*, 2012 WL 5818300, at \*5 (N.D. Cal. Nov. 15, 2012); *Gray v. Golden Gate Nat’l Recreational*  
 26 *Area*, 2011 WL 6934433, at \*1 (N.D. Cal. Dec. 29, 2011); *In re Apple & ATTM Antitrust Litig.*,

27 \_\_\_\_\_  
 28 <sup>4</sup> The Class Certification Order appears to contemplate a *Daubert* process before notice goes out.  
 Class Certification Order at 17 n.3. This necessary process does not appear to allow notice and  
 opt-outs to happen in an orderly or appropriate fashion before trial.

1 2010 WL 11489069, at \*3-4 & n.11 (N.D. Cal. Sept. 15, 2010) (“courts routinely grant stays  
 2 pending decision on Rule 23(f) petitions”). District courts also regularly grant stays pending  
 3 “resolution of [an] interlocutory appeal” under Section 1292(b), recognizing that “[i]t would be a  
 4 waste of judicial and party resources to proceed” with the case “while the appeal is pending.” *Ass’n*  
 5 *of Irrigated Residents v. Fred Schakel Dairy*, 634 F. Supp. 2d 1081, 1094 (E.D. Cal. 2008); *see*,  
 6 *e.g.*, *Silbersher v. Allergan Inc.*, 2021 WL 292244, at \*3 (N.D. Cal. Jan. 28, 2021); *Mauia v.*  
 7 *Petrochem Insulation, Inc.*, 2020 WL 1031911, at \*4 (N.D. Cal. 2020); *Canela v. Costco Wholesale*  
 8 *Corp.*, 2018 WL 3008532, at \*4 (N.D. Cal. June 15, 2018); *Regents of Univ. of Cal. v. DHS*, 2018  
 9 WL 1210551, at \*7 (N.D. Cal. Mar. 8, 2018) (Alsup, J.); *Senne*, 2017 WL 5973487, at \*3-4; *Cobalt*  
 10 *Partners, LP v. Sunedison, Inc.*, 2016 WL 4488181, at \*8 (N.D. Cal. Aug. 26, 2016) (Alsup, J.).  
 11 Such stays are granted as part of “the power inherent in every court to control the disposition of the  
 12 causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”  
 13 *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *see Mediterranean Enters., Inc. v. Ssangyong*  
 14 *Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983).

15 District courts apply a four-factor test when deciding whether to grant a stay pending a Rule  
 16 23(f) petition and appeal. Specifically, they consider: (1) whether the stay applicant has a “fair  
 17 prospect” of success on the merits; (2) “whether the applicant will be irreparably injured absent a  
 18 stay”; (3) “whether issuance of the stay will substantially injure the other parties interested in the  
 19 proceeding”; and (4) “where the public interest lies.” *Leiva-Perez v. Holder*, 640 F.3d 962, 964,  
 20 967 (9th Cir. 2011). Here, all of these factors weigh in favor of a stay of proceedings in this Court.

21 **A. At a Minimum, Anthropic Has a Fair Prospect of Success on its Rule 23(f)**  
 22 **Petition or its Section 1292(b) Motion**

23 The first stay factor requires Anthropic to show that it “has a substantial case” or “fair  
 24 prospect” of success on the merits. *Leiva-Perez*, 640 F.3d at 967-68. Anthropic need not “show[]  
 25 that success is more likely than not.” *Id.* at 968.

26 Here, Anthropic has at least a fair prospect of obtaining permission to appeal the Class  
 27 Certification Order under Rule 23(f). The Ninth Circuit deems “[r]eview of class certification  
 28 decisions” to “be most appropriate when” the “certification decision presents an unsettled and

1 fundamental issue of law relating to class actions”; “the district court’s class certification decision  
2 is manifestly erroneous”; or “there is a death-knell situation for [the litigation] that is independent  
3 of the merits of the underlying claims.” *Chamberlan*, 402 F.3d at 959. While the presence of any  
4 one of those factors is sufficient to permit Rule 23(f) review, all three exist here. Specifically, this  
5 Court’s unprecedented decision to certify a copyright class of millions of rightsholders, many of  
6 whom may have shared interests in the same works, raises novel questions about the scope and  
7 manageability of copyright class actions. That decision is also, in Anthropic’s view, manifestly  
8 erroneous because of the many individualized issues presented, including ownership, registration,  
9 validity, substantial similarity, and damages. And the certification decision places significant  
10 pressure on Anthropic to settle, regardless of the correct view of the merits, given the magnitude of  
11 potential damages liability it faces.

12 In addition, Anthropic has a substantial case for interlocutory appeal under Section 1292(b),  
13 which requires that an order “involve[] a controlling question of law as to which there is substantial  
14 ground for difference of opinion” and that “an immediate appeal from the order may materially  
15 advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b). As explained in  
16 Anthropic’s Section 1292(b) motion, this Court’s Summary Judgment Order conflicts with another  
17 order presenting the same issues involving the same data and presents an important legal question  
18 concerning fair use that warrants immediate appellate review. *See* ECF No. 241, at 7-16.

19 **B. Anthropic Will Be Irreparably Injured Absent a Stay**

20 Anthropic faces irreparable injury without a stay. Courts in the Ninth Circuit have routinely  
21 held that a defendant suffers irreparable harm if it is compelled to spend “substantial, unrecoverable  
22 time and resources” on litigation “where an appeal may result in decertification of the class.”  
23 *Romero*, 383 F. Supp. 3d at 1075; *see, e.g., Senne*, 2017 WL 5973487, at \*3 (“Should the Ninth  
24 Circuit reverse this Court’s . . . Order on certification . . . , Defendants will suffer substantial harm  
25 if this action is not stayed pending appeal as they will have devoted very substantial time and  
26 resources on the litigation, particularly with respect to the completion of discovery, dispositive  
27 motions and trial preparation on class claims.”); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 2015  
28 WL 4397175, at \*3 (C.D. Cal. June 8, 2015) (monetary losses can be irreparable if “the imminence

1 of trial” means defendants “are forced to incur much of the expense of potentially unnecessary trial-  
2 oriented litigation” pending a decision on the 23(f) petition); *Pena v. Taylor Farms Pac., Inc.*, 2015  
3 WL 5103157, at \*4 (pretrial costs may be irreparable harm “when granting a motion to stay would  
4 avoid substantial, unrecoverable, and wasteful discovery costs”); *Gray*, 2011 WL 6934433, at \*3  
5 (defendant “suffer[s] substantial harm” if it is compelled to spend “substantial time and resources”  
6 on litigation “and the [district court] is later reversed on the issue of class certification”).

7 Here, fact discovery is ongoing and scheduled to close on August 29, 2025. Immediately  
8 thereafter, expert discovery will commence with the disclosure of opening expert reports.  
9 Opposition and reply reports will be disclosed over the next few weeks, and expert discovery will  
10 close on October 3. In parallel, the parties may file motions related to fact discovery (due  
11 September 5), dispositive motions (due October 1), and motions related to expert discovery (due  
12 October 10). Jurors will then be summoned with trial set to begin in early December 2025. Absent  
13 a stay, this intensive litigation will occur even though it may ultimately need to be redone after  
14 appellate guidance is provided. *See Flo & Eddie*, 2015 WL 4397175, at \*3-4 (Where “[t]rial in this  
15 case is fast-approaching,” a stay pending 23(f) petition avoids the defendant having to “expend  
16 significant resources preparing for and likely actually trying the class action,” while “concurrently”  
17 litigating 23(f) appeal—which it “will have to abandon in favor of a full-blown appeal of the final  
18 judgment if the trial concludes before an interlocutory appellate decision issues”).

19 Proceeding with class notice absent a stay threatens Anthropic with irreparable reputational  
20 injury, as millions of potential class members would receive notice that may later prove unfounded  
21 if the certification order is reversed on appeal. Indeed, those reputational costs “would be  
22 completely unnecessary . . . if the class is decertified.” *Romero*, 383 F. Supp. 3d at 1075; *see*  
23 *Willcox v. Lloyds TSB Bank, PLC*, 2016 WL 917893, at \*7 (D. Haw. Mar. 7, 2016) (holding that  
24 “premature issuance of class notice could certainly damage [a defendant’s] reputation,” especially  
25 because “it is not clear whether each member of the putative class is aware of the pending  
26 litigation”).

27 Finally, Anthropic faces potentially business-threatening liability and reputational harm  
28 from a trial under the Court’s present framework. Anthropic should not be subject to such

1 irreparable harm absent appellate guidance—particularly when other lower courts are resolving the  
2 same fair use questions involving the same books datasets against other companies differently and  
3 more favorably.

4 **C. Plaintiffs Will Not Be Harmed If a Stay Is Granted**

5 There will be no substantial injury to Plaintiffs if the Court stays the case pending  
6 Anthropic’s Rule 23(f) petition or Section 1292(b) interlocutory appeal. Plaintiffs seek monetary  
7 damages as a classwide remedy. *E.g.*, Class Certification Mot. (ECF No. 125) at 13 (seeking to  
8 “maximiz[e] recovery in and compensation for” Anthropic’s alleged copyright infringement); *see*  
9 Summary Judgment Order at 31-32 (confirming remedy phase at trial would resolve any “resulting  
10 damages, actual or statutory”). If the Ninth Circuit ultimately upholds that theory of liability, then  
11 Plaintiffs’ harms can be adequately remedied by damages. As this Court has explained when  
12 granting a stay, “a delay in recovering monetary damages (as opposed to injunctive or declaratory  
13 relief) does not constitute ‘a strong showing in support of [the] assertion that [a plaintiff] will suffer  
14 irreparable damage and a miscarriage of justice.’” *Hung v. Tribal Techs.*, 2014 WL 12812429, at  
15 \*2 (N.D. Cal. Sept. 18, 2014) (alteration in original) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265,  
16 268-69 (9th Cir. 1962)).

17 **D. The Public Interest Favors a Stay**

18 “[T]he public . . . has an interest in efficient use of judicial resources.” *Romero*, 383 F.  
19 Supp. 3d at 1077; *see Brown*, 2012 WL 5818300, at \*5. Here, a stay will maximize efficiency.  
20 The Ninth Circuit—which averages three months to resolve a Rule 23(f) position, but which can  
21 take over 120 days to do so—may not rule on Anthropic’s Rule 23(f) petition until discovery is  
22 complete, the notice and opt-out process has occurred, and potentially even trial has begun. If the  
23 Ninth Circuit were to grant review and reverse either of this Court’s orders, then all the work by  
24 the parties, the jurors, and Court could be wasted. *E.g.*, *Karoun Dairies, Inc. v. Karlacti, Inc.*, 2013  
25 WL 4716202, at \*4 (S.D. Cal. Sept. 3, 2013) (granting stay pending Ninth Circuit resolution given  
26 “hardship or inequity on behalf of all those involved—the litigants, the witnesses, the jury  
27 members, and the Court—if a stay is denied”); *Brown*, 2012 WL 5818300, at \*5 (granting stay to  
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1 “prevent[] potentially wasteful work on the part of the court and the parties while the Ninth Circuit  
2 considers the serious legal question raised by Defendant’s Rule 23(f) petition”).

3 Moreover, if the Ninth Circuit were to issue an opinion clarifying or revising this Court’s  
4 orders, then discovery and trial could have to be redone under a different legal framework. Even  
5 if the Ninth Circuit affirms entirely, a stay allows the parties and the Court to proceed with  
6 confidence. In all events, allowing these proceedings to continue while appellate proceedings are  
7 pending could well lead to “an inefficient use of resources.” *Johnson v. Merck & Co., Inc.*, 2007  
8 WL 754882, at \*2 (N.D. Cal. Mar. 8, 2007) (Alsup, J.) (granting stay); *see, e.g., Senne*, 2017 WL  
9 5973487, at \*4 (granting stay because the Ninth Circuit’s decision on appeal might make it  
10 “necessary to decide a second round of dispositive motions and conduct a second trial”); *Gray*,  
11 2011 WL 6934433, at \*3 (finding that “a stay would avoid wasting resources on a class action  
12 litigation which might be changed in scope on appeal”).

13 The public interest would also be well served by allowing appellate input prior to any trial  
14 against Anthropic—notably, the smallest of the LLM companies facing similar lawsuits—that  
15 raises the specter of billions of dollars in potential liability. As explained, many putative class  
16 actions against many technology companies based on the same conduct are working their way  
17 through the courts. It does not serve the public interest to have the trial against Anthropic occur  
18 prior to orderly appellate review of the vitally important questions presented about this  
19 transformative technology.

#### 20 **IV. CONCLUSION**

21 The Court should stay these proceedings pending resolution of Anthropic’s Rule 23(f)  
22 petition, and if the petition is granted, its Ninth Circuit appeal. In addition, if the Court certifies  
23 the Summary Judgment Order for interlocutory review, the Court should also stay these  
24 proceedings until the final resolution of proceedings in the Ninth Circuit.

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Dated: July 24, 2025

COOLEY LLP

By: /s/ Kathleen R. Hartnett  
Kathleen R. Hartnett

*Attorneys for Defendant  
Anthropic PBC*

**CERTIFICATE OF SERVICE**

I, Kathleen Hartnett, am the ECF user whose identification and password are being used to file the foregoing Defendant Anthropic PBC’s Motion for Stay.

Dated: July 24, 2025

By: /s/ Kathleen R. Hartnett  
Kathleen R. Hartnett