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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ANDREA BARTZ, CHARLES GRAEBER, and KIRK WALLACE JOHNSON,

Plaintiffs,

v.

ANTHROPIC PBC,

Defendant.

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

Action Filed: August 19, 2024

DEFENDANT ANTHROPIC PBC'S REPLY IN SUPPORT OF MOTION FOR AN ORDER PERMITTING INTERLOCUTORY APPEAL PURSUANT TO 28 U.S.C. § 1292(B) OR, IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION

Hearing Date: August 28, 2025
Hearing Time: 8:00 a.m.
Judge: Honorable William H. Alsup

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I. INTRODUCTION

The Court's summary judgment order (Order) should be certified for interlocutory appeal under 28 U.S.C. § 1292(b) because the Order involves controlling and broadly impactful legal issues about the fair use standard that have divided courts in this District, and resolution of those issues would materially advance this (and other) litigation. Given the enormous stakes of this case—and the many similar cases raising copyright challenges to generative AI (GenAI) technology—the Ninth Circuit should clarify the governing legal rules before this Court conducts a class trial where Anthropic could face hundreds of billions of dollars in potential liability.

Plaintiffs offer no sound argument against interlocutory appeal. Plaintiffs incorrectly characterize this Court's Order as presenting only "fact-bound" questions. That characterization ignores the importance of this Court's legal framework, which is what led it to parse Anthropic's conduct into constituent steps and analyze a supposed preliminary step of creating a central library as a separate "use," rather than in the context of Anthropic's ultimate purpose of developing LLMs. And while Plaintiffs allege various distinctions between this case and *Kadrey v. Meta Platforms, Inc.*, No. 23-cv-3417 (N.D. Cal.), they cannot plausibly deny that Judge Chhabria reached a conflicting fair use holding on materially identical facts. If Anthropic's case were before Judge Chhabria, it—like Meta—would have prevailed on summary judgment. The Ninth Circuit should resolve that stark conflict now.

Alternatively, the Court should allow Anthropic to move for reconsideration of the Order, which is premised on a fundamental oversight: There is no evidence that Anthropic downloaded books "to create a central, general-purpose library" separate from LLM development. Order at 19. Anthropic's Motion explains why each piece of the record the Court relied on in concluding there was a library either pertained only to books *purchased* for scanning or was directly tied to LLM development, and Plaintiffs do not meaningfully grapple with this detailed showing by Anthropic. Nor do they identify anything in the summary judgment briefing or argument addressing a "general-purpose library theory." Indeed, the phrase "general-purpose library" appears nowhere in the summary-judgment briefing and was never discussed at oral argument when describing Anthropic's use of books. Because Plaintiffs never raised such a theory, Anthropic had no opportunity to

respond to it. The Court should give Anthropic that opportunity now.

II. THE ORDER MEETS THE REQUIREMENTS FOR § 1292(B) REVIEW BECAUSE IT RAISES CRITICAL AND UNSETTLED ISSUES REGARDING FAIR USE THAT HAVE DIVIDED COURTS IN THIS DISTRICT

Interlocutory appeal is warranted because the Order "involves a controlling question of law as to which there is substantial ground for difference of opinion" and the appeal "may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). The Ninth Circuit employs a "flexible approach" to application of this standard, designed to avoid the "unnecessary, protracted litigation" and "considerable waste of judicial resources" that would result from a "rigid approach" to the final-judgment rule. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 688 n.5 (9th Cir. 2011). As one leading treatise explains, this "flexible approach to § 1292(b) is far superior to blind adherence to a supposed need to construe strictly any permission to depart from the final-judgment rule." 7A Charles Alan Wright et al., Federal Practice and Procedure § 3929 (4th ed.). Thus, Plaintiffs' belabored emphasis on the "importance of the final judgment rule" (Opp. 6) misses the point: Congress enacted Section 1292(b) specifically to deviate from the final judgment rule when the relevant statutory standard is met.

Here, two legal questions meet the statutory standard for immediate appeal, especially because they have divided courts in this District. The first is whether courts should analyze fair use by reference to the defendant's ultimate purpose in using a copyrighted work. The second is whether a defendant's acquisition of a copyrighted work from an unauthorized source counsels strongly against fair use. The resolution of these questions could materially affect the outcome of this litigation, and reasonable jurists have disagreed on the answers. Plaintiffs' contrary arguments lack merit.

A. Interlocutory Review Is Warranted to Determine Whether Fair Use Is Analyzed By Reference to the Defendant's Ultimate Purpose in Using a Work

1. The Ultimate Purpose Inquiry Is a Controlling Legal Issue, Resolution of Which May Materially Advance the Litigation

a. To determine whether a defendant's use of copyrighted materials is fair, a court must assess the ultimate purpose of that use. That requirement flows from the text of the Copyright Act, which makes "the purpose and character of the use" the first factor in the fair-use inquiry. 17 U.S.C.

§ 107(1). Thus, a court cannot view a defendant's original copying of protected materials in isolation—it must evaluate *why* the defendant copied those materials. In *Google v. Oracle*, 593 U.S. 1 (2021), for instance, the Supreme Court explained that Google "copied portions of the Sun Java API" because it was "seek[ing] to expand the use and usefulness of Android-based smartphones." *Id.* at 30. And in *Kelly v. Arriba Soft Corp.*, 336 F.3d 811 (9th Cir. 2003), the Ninth Circuit explained that Arriba downloaded images and stored lower-resolution thumbnails on its server in order to create a "search engine [that] functions as a tool to help index and improve access to images on the internet." *Id.* at 815, 818.

Plaintiffs contend (at Opp. 8-11) that the Order's conclusions about fair use are fact bound. But whether a particular "use" of copyrighted materials is fair based on its ultimate purpose is a "question of law." 28 U.S.C. § 1292(b). In *Google*, "Google argue[d] that 'fair use' is a question for a jury to decide" and that the Supreme Court's review was "limit[ed] to determining whether 'substantial evidence' justified the jury's decision" in Google's favor. 593 U.S. at 23. The Supreme Court rejected that argument, explaining that while "reviewing courts should appropriately defer to the jury's findings of underlying fact," the "ultimate question whether those facts showed a 'fair use' is a legal question for judges to decide *de novo*." *Id.* at 23-24. The Court then evaluated each of the fair-use factors *de novo*, including Google's "purpose" when it "copied portions of the Sun Java API." *Id.* at 30. Here too, the "purpose and character" analysis, 17 U.S.C. § 107(1), presents a legal issue that the Ninth Circuit would review *de novo*.

b. As Anthropic's Motion explained, it was legal error for the Order to parse Anthropic's use of the downloaded data into subsidiary steps. Mot. at 8-11. The Order compounded that legal error by then failing to conduct the required ultimate-purpose analysis with respect to each step—including what the Court viewed as the separate "use" of downloading and storing the books. *Id.* Had the Court evaluated every aspect of Anthropic's conduct in light of its ultimate goals, it would have been bound to conclude that the ultimate purpose of the supposed subsidiary steps, such as downloading and storing book data, was developing LLMs. The Order acknowledged that one reason Anthropic downloaded and stored the books was to develop LLMs. Order at 5. It also concluded that developing LLMs was "among the most transformative [uses] many of us will see

in our lifetimes." *Id.* at 30. That ultimate, transformative purpose should have guided this Court's evaluation of every aspect of Anthropic's conduct.

As Anthropic has explained in its alternative motion for reconsideration of the Order, a proper reading of the record does not support the notion of a "central library" use for downloaded books. But even assuming there *was* record evidence that Anthropic intended to build a central library of works, there is no record evidence that any such library served a purpose other than developing LLMs. Anthropic is an AI company that develops LLMs. It has no other purpose, and nothing in the record suggests that Anthropic took any action—including downloading books—for any purpose *other* than developing LLMs. It is undisputed that when Anthropic began developing LLMs, it downloaded books that could generate the tokens necessary to train LLMs and stored those works so they could be easily accessed during the training process. *See* Mot. 3-4. And because developing LLMs involves an iterative process to train increasingly capable models, Anthropic did not delete the books immediately. Indeed, deleting training data would simply require Anthropic to download and process it again to further refine the next version of its LLM. Thus, every activity that this Court relied on as evidence of a "library use"—downloading, storage, and retention—was aimed at the development of LLMs. Yet, because the Court did not conduct the "ultimate-purpose" inquiry, it failed to recognize that any "library use" was inextricable from training LLMs and thus fair.[1]

c. Plaintiffs ignore the legal error identified by Anthropic in claiming that "what constitutes a 'use' in this case is inextricably fact bound." Opp. 8; *see id.* at 10 (emphasizing the Court's view of a separate library use). Although Anthropic alternatively seeks reconsideration of the "library use" finding, *see* pp. 11-15, *infra*, Anthropic's Section 1292(b) argument *assumes such a use.* And, assuming such a use, the relevant question is a legal one: whether this Court erred by failing to recognize that the perceived "library use" served Anthropic's ultimate purpose of developing

[1]Plaintiffs did not raise the "library use" theory in their summary judgment briefing. Had they done so, Anthropic would have presented specific evidence to show that the sole purpose of any purported "library" was to support the development of LLMs. For instance, Anthropic would have demonstrated that the books downloaded from the LibGen dataset are used to run a copyright-protective output filter, also called a recitation checker, that helps ensure Claude does not produce copyrighted language in its outputs. Anthropic would welcome the opportunity to provide supplemental briefing and evidence on this issue.

reliable, safe LLMs. Because this Court did not consider whether the so-called "library use" served this ultimate purpose and because that is an important, controlling question of law, Section 1292(b) review is warranted.

Plaintiffs also incorrectly suggest that it was sufficient for the Order to conclude that the supposed library was designed to make books "available for any number of further uses." Opp. at 11-12 (quoting Order at 19). The Supreme Court has made clear, however, that a court must thoroughly analyze a defendant's ultimate purpose in using a copyrighted work. In *Google*, the Supreme Court noted that Google had copied portions of Oracle's computer code "in part for the same reason that [Oracle] created those portions, namely, to enable programmers to . . . accomplish particular tasks." 593 U.S. at 30. But the Court went further, explaining that because "virtually any unauthorized use of a copyrighted program . . . would do the same"—i.e., "accomplish particular tasks"—"to stop [the analysis] here would severely limit the scope of fair use in the functional context of computer programs." *Id.* So the Court examined Google's ultimate purpose in copying and storing the code, which was "creat[ing] new products" that would "expand the use and usefulness of Android-based smartphones." *Id.* Here, viewing Anthropic's purpose as making books "available for any number of further uses," Order at 19, cuts the inquiry short in the same way as merely saying Google copied computer code to help programmers "accomplish particular tasks." *Google*, 593 U.S. at 30. That truncated analysis was insufficient in *Google*, and it is insufficient here. Instead, the Court should have asked what further uses the record supports. And the record reflects that to the extent storing book data can be described as building a library, it served no purpose other than Anthropic's ultimate purpose of LLM development, i.e., the *only* purpose identified by *both* sides in the summary judgment briefing. *See generally* ECF No. 122 ("MSJ"); ECF No. 158 ("MSJ Opp.").

Plaintiffs also fail to explain why this Court's observation that Anthropic did not "immediately" use the books to train Claude or "immediately" delete them thereafter justifies its failure to analyze Anthropic's ultimate purpose. Opp. at 8-9 (citing Order at 19, 21). Plaintiffs cite no authority, and Anthropic is aware of none, to support the notion that a defendant, after putting copyrighted works to an undeniably fair use, can be held liable for copyright infringement simply

because it did not then destroy the original copies. Indeed, if that were the case, every fair use case would require a separate inquiry into whether the defendant destroyed the original copies and how long that process took. Anthropic knows of no other court to have engaged in that kind of analysis. *See, e.g.*, *Google*, 593 U.S. at 30; *Kelly*, 336 F.3d at 815; *Sony Computer Ent., Inc. v. Connectix Corp.*, 203 F.3d 596, 598 (9th Cir. 2000).

Finally, Plaintiffs have no credible argument that resolving the "ultimate-purpose" question on appeal will not materially advance the litigation. They argue that if Anthropic were to prevail on appeal, "this Court's conclusion that the 'ultimate use' of Anthropic's pirated copies *was not solely to train LLMs* would remain intact." Opp. 11 (emphasis in original). Anthropic disagrees: If it prevails on whether the ultimate-purpose inquiry is required, then the record in this case shows only one ultimate purpose—LLM development. But, at a minimum, the Ninth Circuit would need to vacate the Court's order so that the Court could reevaluate Anthropic's conduct based on the correct legal framework, thereby materially advancing resolution of this case.

2. There Is Substantial Ground for Difference of Opinion on the Ultimate Purpose Inquiry

a. While 28 U.S.C. § 1292(b) and Ninth Circuit precedent allow for interlocutory review where "fair-minded jurists *might* reach contradictory conclusions," *Reese*, 643 F.3d at 688 (emphasis added), fair-minded jurists in this district have *already* diverged on this issue. As a result, review is plainly warranted.

In *Kadrey v. Meta Platforms, Inc.*, No. 23-cv-03417, 2025 WL 1752484 (N.D. Cal. June 25, 2025), Judge Chhabria had to determine whether Meta could be held liable for the same basic conduct at issue in this case. Like this Court, Judge Chhabria found that using books to develop an LLM "is a use with a different purpose and character than the books themselves." *Id.* at *9. And like this Court, he then considered whether "Meta's downloading of the plaintiffs' books"—from some of the same so-called "pirated" books datasets at issue here—created a basis for copyright liability. *Id.* at *12. This is where the two courts diverged. Although Judge Chhabria agreed with this Court that downloading and storing the books was a "different *use* from any copying done in the course of LLM training," he explained that this use had to "be considered in light of its *ultimate,*

highly transformative purpose: training [the LLM]." *Id.* (emphasis added). He reached that conclusion even though there was no suggestion that Meta deleted those books after using them for training. In contrast, this Court determined that a separate purported library use was enough to partially deny summary judgment, even though the ultimate purpose of any so-called library was to develop LLMs.

b. Plaintiffs' attempt to distinguish *Kadrey* as not involving a separate "central library" use and as viewing Meta's only purpose as "LLM training" fails. Opp. 13-15. Instead, this characterization merely underscores the critical difference between this Court's legal analysis and *Kadrey*'s. Both cases involve the same basic factual scenario—an LLM company downloading, storing, and retaining books from "pirate" sites such as LibGen and Books3 to develop an LLM. ECF No. 119-5 ("Kaplan Decl.") ¶ 6; *Kadrey*, 2025 WL 1752484, at *6-*7. And yet this Court parsed out a supposed "central library" precursor use and did not inquire as to the ultimate purpose of any so-called library. In contrast, *Kadrey* did not parse out such a precursor and assessed Meta's course of conduct in light of its "ultimate, highly transformative purpose" in downloading the works. *Kadrey*, 2025 WL 1752484, at *12. Indeed, *Kadrey* specifically explained that the result there would have been the same "even if Meta did download some copies that weren't ultimately used for training," because these "downloads . . . had the ultimate purpose of LLM training." *Id.* at *12-*13. Contrary to Plaintiffs' contention (at Opp. 14), this was not a "stray comment" or a "passing statement." It was core to *Kadrey*'s reasoning and directly counter to this Court's conclusion that Anthropic's downloading was not fair use because "[n]ot every copy [Anthropic made] was even necessary nor used for training LLMs." Order at 21. Thus, had the *Kadrey* framework applied here, Anthropic would have won summary judgment in full.

Plaintiffs also mischaracterize the proceedings in *Kadrey*. Plaintiffs would have this Court believe that Judge Chhabria "rejected a similar request for interlocutory review." Opp. 1. In fact, no party moved for an interlocutory appeal in *Kadrey*. Instead, after Judge Chhabria granted partial summary judgment for Meta, the parties discussed next steps in the litigation, and the plaintiffs suggested they might pursue an interlocutory appeal. Joint Case Mgmt. Stmt. at 5, *Kadrey v. Meta Platforms, Inc.*, No. 3:23-cv-03417 (N.D. Cal. July 8, 2025), ECF No. 605 (Meta, noting that

initially "Plaintiffs had taken the position in meet and confer that they wished to seek prompt appellate review of the summary judgment order"). The plaintiffs then decided against doing so, and Judge Chhabria declined to *sua sponte* enter partial final judgment in favor of Meta under Federal Rule of Civil Procedure 54(b). *See* ECF No. 276-1 at 13-15 (*Kadrey* transcript). But Judge Chhabria never considered the issue here: whether to certify his summary-judgment ruling for interlocutory appeal under Section 1292(b).

Finally, Plaintiffs incorrectly assert that interlocutory review is not appropriate unless there is a circuit conflict. Opp. 16. In fact, the Ninth Circuit has made clear that interlocutory review is warranted if "the circuits are in dispute . . . *or* if novel and difficult questions of first impression are presented." *Couch v. Telescope Inc.*, 611 F.3d 629, 633 (9th Cir. 2010) (emphasis added). Indeed, the Ninth Circuit has previously granted interlocutory review of legal issues to address "diverging views in the district courts." *In re Kirkland*, 75 F.4th 1030, 1047 (9th Cir. 2023). There is no need for "adverse authority [to] develop around an issue before [the Ninth Circuit] review[s] it on interlocutory appeal." *Reese.*, 643 F.3d at 688 n.5. And courts have specifically permitted Section 1292(b) interlocutory appeals following the resolution of an important fair use issue even absent any conflict between circuit or district courts. *See Am. Geophysical Union v. Texaco Inc.*, 60 F.3d 913, 915 (2d Cir. 1994); *Thomson Reuters Enter. Centre GmbH v. ROSS Intel. Inc.*, No. 20-cv-00613 (D. Del. May 23, 2025), ECF No. 804.

B. Interlocutory Review Is Warranted to Determine Whether a Defendant's Acquisition of a Copyrighted Work from an Unauthorized Source Counsels Strongly Against Fair Use

1. The Significance of a Work's Origin Is a Controlling Legal Issue, Resolution of Which Will Materially Advance the Litigation

Nothing in the Copyright Act suggests that the fair-use defense applies with any less force when the defendant obtained the relevant works from an unauthorized third party. The Act simply provides that the "fair use of a copyrighted work . . . is not an infringement of copyright" and lists four factors courts should consider. 17 U.S.C. § 107. None of these factors address the work's origin. Indeed, the entire premise of fair-use doctrine is that the defendant lacked permission to use the works—whether a third party initially distributed the works without permission has no

bearing on the analysis.

Nonetheless, the Order treats the origin of the books in this case—so-called "pirate libraries"—as highly relevant to Anthropic's fair use defense. For instance, it expresses "doubt that any accused infringer could ever meet its burden of explaining why downloading source copies from pirate sites *that it could have purchased or otherwise accessed lawfully* was itself reasonably necessary to any subsequent fair use." Order at 18 (emphasis in original). Whether that doubt is well-founded raises a purely legal question about interpreting Section 107.

Plaintiffs claim that the Order is "fact dependent" because a work's origin can sometimes matter to the fourth fair-use factor—i.e., "the effect of the use upon the potential market for or value of the copyrighted work." Opp. 17 (citing 17 U.S.C. § 107). For instance, they note that "piracy may benefit pirate 'libraries or their other users,' which risks greater piracy by others," and that "piracy" could be "so significant in a given case" that it "'destroy[s] the academic publishing market.'" *Id.* (citations omitted). But even assuming those observations are true, they do not negate the purely legal nature of the issue presented by the Court's Order—whether merely obtaining a work from an unauthorized third party counsels strongly (or even dispositively) against fair use even if the conditions relevant to the fourth factor are not met.

Plaintiffs' own arguments also belie their claim that the Order's references to "piracy" are fact dependent. For example, they assert that the "case law that does consider piracy uniformly holds that piracy is unprotected by fair use," and they seek to distinguish Anthropic's authorities by arguing that they do not "concern[] piracy at all." Opp. 14-15. But Plaintiffs cannot have it both ways—they cannot insulate the Order from review by characterizing it as fact-bound, while also embracing the Order's legal conclusion that "piracy . . . is inherently, irredeemably infringing." *Id.* at 13-14 (citing Order at 19). Moreover, Anthropic's point is not that piracy is protected by fair use *per se*, but that nothing in fair use law makes piracy relevant to the analysis, absent the fourth factor analysis discussed above. As discussed, the unauthorized nature of the copying is an inherent feature of fair use.

Plaintiffs further insist that the significance of a work's origin is "not controlling" under Section 1292(b) because the Order does not rely solely on that point. Opp. 16-17. But a legal issue

1 is "controlling" for purposes of Section 1292(b) if it "*could* materially affect the outcome of the
2 litigation." *In re Cement Antitrust Litig.*, 673 F.2d 1020, 1027 (9th Cir. 1981) (emphasis added).
3 By distinguishing between "purchased library copies" and "pirated library copies" to assess
4 whether the purported "library use" was fair, the Order makes clear the perceived import of the
5 origin of the books. Order at 14, 18. And this Court's class-certification ruling reinforces the
6 significance of Anthropic's alleged "piracy" by declaring (incorrectly) "that Anthropic *is liable* for
7 all pirated copies regardless of whether they were used for training." ECF No. 244 at 24-25
8 (emphasis added). Moreover, this Court's purported "rule"—i.e., that "piracy of otherwise
9 available copies is inherently, irredeemably infringing even if the pirated copies are immediately
10 used for the transformative use and immediately discarded," *id.* at 19—means that Anthropic may
11 lose even if it can show that the ultimate purpose of downloading the books was training LLMs and
12 the other factors counsel in favor of fair use.

13 **2. There Is Substantial Ground for Difference of Opinion on the Relevance of a Work's Origin**

14 As with the ultimate purpose issue, fair-minded jurists have already reached contradictory
15 conclusions about how the origin of a work pertains to the fair-use analysis. In *Kadrey*, Judge
16 Chhabria rejected the argument that "the fact that Meta downloaded the books from shadow
17 libraries and did not start with an 'authorized copy' of each book gives [plaintiffs] an automatic
18 win." 2025 WL 1752484, at *11. "To say that Meta's downloading was 'piracy' and thus cannot
19 be fair use begs the question," he explained, "because the whole point of fair use analysis is to
20 determine whether a given act of copying was unlawful." *Id.* He thus expressly disagreed with
21 this Court that "piracy of otherwise available copies is inherently, irredeemably infringing." Order
22 at 19.

23 Plaintiffs emphasize *Kadrey*'s statement that "piracy could indeed matter in at least 'a few
24 different ways,'" Opp. 18 (citing *Kadrey*, 2025 WL 1752484, at *11), but they make no effort to
25 show how any are relevant here. Moreover, Judge Chhabria's bottom line was that the type of
26 "piracy" alleged in *Kadrey* and here—downloading books from websites not authorized to host
27 them—did not preclude or even strongly weigh against fair use in the context of training
28

transformative LLMs. *See Kadrey*, 2025 WL 1752484, at *11. In contrast, this Court viewed downloading from unauthorized sources as weighing heavily against, if not dispositive of, any claim of fair use based on the ultimate purpose in using the downloaded works. *See* Order at 19.

Finally, Plaintiffs mischaracterize (at Opp. 2) the supplemental briefing required in *Kadrey*. That supplemental briefing addresses the *Kadrey* plaintiffs' remaining claim of unlawful *distribution* via torrenting under the Copyright Act, *see* ECF No. 276-1 at 25 (*Kadrey* transcript)—a claim not present and therefore irrelevant in this case.

III. ALTERNATIVELY, RECONSIDERATION OF THE ORDER IS WARRANTED

If this Court does not certify its summary judgment order for interlocutory appeal, it should grant Anthropic leave to move for reconsideration. Anthropic is not seeking a "do-over." *Contra* Opp. 20. It is seeking to demonstrate, for the first time now since the Court raised the issue *sua sponte*, that it did not create a "general-purpose library" separate from LLM development. Because Plaintiffs never raised that theory, Anthropic never had the chance to rebut it. Granting reconsideration would give Anthropic that opportunity now.

A. In Finding the Existence and Use of a General-Purpose Library by Anthropic, this Court Manifestly Failed to Consider Material Facts

Reconsideration is warranted because the Court "manifest[ly] fail[ed]" to "consider material facts." L.R.7-9(b)(3); *see* Mot. 17-19. Anthropic's argument is not a "quibble" over factual inferences. Opp. 21. Rather, the Court's notion of Anthropic downloading "pirated" books to create a "permanent, general-purpose library"—the core basis for the Court rejecting summary judgment—has no support in the summary judgment record. Order at 9.

1. The record on summary judgment, including the exhibits on which this Court relied, does not support the "central library" theory. Indeed, Plaintiffs fail to address *any* of the specific evidence Anthropic identified in its Motion (Mot. at 18-19) that belies the "central library" theory. As the Motion explains, Mr. Turvey's testimony cited by the Court addressed only the books that Anthropic was purchasing and scanning, *not* the books Anthropic downloaded from the Internet.

MSJ Opp. Ex. 22 (ECF No. 152-22), at 145-146.[2] Internal documents likewise linked any "library" discussion to books "purchas[ed]" and "scann[ed]" in 2024, not those downloaded in 2021-2022. ECF No. 121-8, Ex. 12, at 144507-09; *see* ECF No. 123-2 ¶ 13 (Mr. Turvey joined Anthropic in 2024, years after the downloading). Even then, Anthropic's "building a research library" with the scanned books was "one and the same" as "train[ing] LLMs." MSJ Opp. Ex. 22, at 145; *id.* at 145-146 (purchased-book library would be "for the purpose of data acquisition that would help inform our . . . products").

Reconsideration exists for precisely this type of factual oversight. In *Blair v. Rent-A-Center, Inc.*, No. C 17-02335, 2019 WL 529292, at *3 (N.D. Cal. Feb. 11, 2019), for instance, the Court acknowledged on second look that underlying "documents d[id] not demonstrate" the conclusions "as set forth in the . . . summary judgment order." The same is true here.

Plaintiffs instead try to counter with their own record evidence of a "central library," yet they rely on the same flawed citations to the record as those cited in the Court's Order—none of which supports a general-purpose library. Opp. 21. For example, Plaintiffs' citation (at Opp. 21) to MSJ Opp. Ex. 17 shows Anthropic's retention of the Libgen dataset after pretraining its LLM was to *further develop Claude* and ensure the model did not produce infringing outputs. ECF No. 152-18, at 93:23-95:13 (data used in Anthropic's internal system to ensure Claude will not "omit strings of texts that may be …in other data sources."). And the "voluminous" library that Plaintiffs now cite was, as Anthropic has explained, "use[d] for research . . . , [r]esearch that [Anthropic] would conduct *when we were building our LLM*." MSJ Opp. Ex. 22 at 145 (emphasis added). Plaintiffs also are wrong that Anthropic "did not mention LLM training at all" when discussing "'open[ing] . . . the books'" downloaded from PiLiMi, Opp. 21, as an employee discussion on the very next page of the pertinent document makes clear that the books were "data" for adding to the "token count" available for LLM training. MSJ Opp. Ex. 12 (ECF No. 152-13) at -0391319. In short, the record material cited in the Order and now repeated by Plaintiffs all shows that Anthropic had no "central library" disconnected from LLM development.

[2]Plaintiffs' assertion that the Court "considered" the argument that storage of "pirated books data" was "a step in LLM training," Opp. 20, thus cannot be right, as the Court and now Plaintiffs are conflating two different sets of books—the earlier downloaded books and the later scanned ones.

1 2. Plaintiffs also fail to refute Anthropic's showing that Plaintiffs neither briefed nor argued
2 a "central library" theory, and thus that Anthropic never had a chance to respond to such a theory
3 until now. While Plaintiffs assert (at Opp. 21) that they provided "evidence" supporting a "general
4 library theory" at summary judgment, they identify no portion of their summary-judgment
5 opposition making a "central library" argument. They also have no response to Anthropic's
6 argument that the only "use" Plaintiffs raised in their summary judgment briefing was Anthropic
7 "us[ing] books to train LLMs." Mot. 19 (quoting MSJ Opp. at 15). The "central library" argument
8 was not part of the summary judgment briefing, and so the cases Plaintiffs cite in which this Court
9 assured the parties it had already considered the "arguments and facts" raised in "briefs, motions,
10 and other filings" are inapposite. Opp. 22 (quoting *McLaughlin v. Wells Fargo Bank, N.A.*, No. C
11 15-02904, 2015 WL 10889994, at *2 (N.D. Cal. Nov. 24, 2015), and *Drevaleva v. VA*, No. C 18-
12 03748, 2019 WL 3037549, at *6 (N.D. Cal. July 11, 2019)).

13 Plaintiffs' misinterpretations of the record here underscore why the absence of full briefing
14 and argument on the "central library" theory was so prejudicial to Anthropic. If Plaintiffs had
15 raised the theory, Anthropic could have shown the Court why the theory and Plaintiffs' citations
16 were incorrect. Anthropic also could have provided additional evidence in response, confirming
17 that the company had no other purpose for downloading datasets separate from developing LLMs.
18 That is how litigation is supposed to proceed. Reconsideration is now warranted so that Anthropic
19 may respond to and rebut—for the first time—the erroneous "general purpose" library theory.
20 *Contra* Opp. 22 (asserting that Anthropic had "ample opportunity to respond to the facts it now
21 contests").

22 3. Finally, Plaintiffs incorrectly seek to blame Anthropic for failing to introduce "what
23 copies or even sets of copies were in fact used for training LLMs," and assert that such "deficiencies
24 must be held against Anthropic." Opp. 22. This argument has two flaws: First, Anthropic did not
25 need to introduce such individualized training evidence to show fair use. Even books that were not
26 used for training were still downloaded for the ultimate purpose of LLM development—which this
27 Court found to be transformative. Mot. 17-18 (citing summary judgment evidence). Second, if
28 Plaintiffs are to be believed, "[t]he summary judgment order makes clear that Anthropic is liable

1 for all pirated copies *regardless of whether they were used for training*." Opp. 20 (emphasis
2 added).[3] If that were true, then such individualized evidence would be irrelevant. Plaintiffs cannot
3 trap Anthropic in a Catch-22 by arguing, on the one hand, that Anthropic should have introduced
4 individualized training evidence, but on the other hand, that such evidence would make no
5 difference. In the end, reconsideration is warranted so that the parties may, for the first time, submit
6 briefs based on the record evidence relevant to the "central library" theory asserted in the Order.

7 **B. Reconsideration Is Warranted in Light of *Kadrey***

8 As Anthropic's Motion explains, district courts have discretion to reconsider their orders in
9 light of other district courts' decisions—particularly in developing areas of law. Mot. 20. Contrary
10 to Plaintiffs' assertion (Opp. 23), Rule 7-9(b)(2) contains no requirement that reconsideration turns
11 only on binding precedent: "Civil Local Rule 7-9(b)(2) simply requires . . . 'a change of law
12 occurring after the time of [the] order'"; "[t]he Local Rule does not refer to a change in *controlling*
13 law." *Roberts v. AT&T Mobility LLC*, No. 15-cv-03418, 2018 WL 1317346, at *3 n.1 (N.D. Cal.
14 Mar. 14, 2018) (emphasis in original).[4] Nor does it matter that *J.B. v. G6 Hosp., LLC*, No. 19-cv-
15 07848, 2021 WL 4079207 (N.D. Cal. Sept. 8, 2021), "turned on a pure question of law." Opp. 23.
16 As detailed above, *Kadrey* and this Court's Order conflict on legal questions. *See* pp. 6-9, 11,
17 *supra*; *see also* Mot. 7-16. At minimum, *Kadrey*'s analysis is persuasive authority that this Court
18 may wish to consider.

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26 [3]Anthropic disagrees with this interpretation of the Court's Order and should be permitted to show at any trial that its downloading of works for LLM training was fair use.

27 [4]Plaintiffs' cited cases (at Opp. 23) in which courts in this District have read Rule 7-9(b)(2) differently to require "controlling" law for reconsideration are inapposite. *Hamzeh v. Pharmavite LLC*, No. 24-cv-00472, 2025 WL 1810082, at *2 (N.D. Cal. July 1, 2025). Unlike here, those cases
28 did not involve a rapidly evolving area of the law—so the courts had no occasion to consider whether reconsideration would be warranted in light of new persuasive authority in that context.

Dated: August 4, 2025

COOLEY LLP

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

Attorneys for Defendant Anthropic PBC

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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 Reply in Support of Motion for an Order Permitting Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(B) or, in the Alternative, Motion for Leave to File Motion for Reconsideration.

Dated: August 4, 2025

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

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