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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 No. 5:24-cv-03811-EKL-SVK

**DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION TO EXTEND
CASE DEADLINES**

Judge: Hon. Eumi K. Lee
Magistrate Judge Susan van Keulen

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1 **I. INTRODUCTION**

2 Publishers sought to downplay the significance of their motion to amend when they filed it
3 *two years* into this litigation, *eight months* after the deadline to amend had passed, and *one month*
4 before the then-close of discovery. They told this Court that the amendment would “not alter the
5 nature of the litigation” and would only modestly expand the issues in this case. ECF 411 at 7.
6 They said they could “complete expedited discovery into the merits of the amended BitTorrent-
7 related claims” under the parties’ short, stipulated discovery extension. *Id.* at 9. Only 5 weeks later,
8 Publishers now say the opposite: their late-breaking bid to amend will “significantly impact” the
9 scope of this litigation and discovery in the case. ECF 435 at 1. Indeed, they now claim that they
10 need another two-month extension of the discovery deadline to accommodate their proposed
11 amendment—on top of the three-month extension they are already seeking to accommodate their
12 related request to add thousands of additional works in suit. ECF 411 at 10. There can no longer
13 be any doubt that Publishers’ dilatory amendment would derail the case schedule and fundamentally
14 transform this case—from one about the lyrics to 499 songs, to one about potentially millions of
15 books that are already the subject of litigation and a potential settlement in *Bartz*.

16 Publishers’ latest request to extend the schedule should be denied for the same reason their
17 motion to amend should be denied: because Publishers lack good cause in light of their own lack of
18 diligence. Indeed, Publishers’ request for yet another extension to accommodate the additional
19 discovery they now seek is proof of the prejudice that will result if their motion to amend is granted.
20 While they previously represented to Anthropic and this Court that their late attempt to amend would
21 not significantly disrupt the case schedule, their current motion puts the lie to that representation.
22 Publishers have no plan for how their dramatic expansion of the claims, facts, and issues in the case
23 can be achieved even with the discovery extension they propose. Instead, they offer conclusory
24 assertions that Anthropic is somehow not prejudiced if, after more than a year of discovery, they are
25 given a re-do and allowed to transform their case and claims at the eleventh hour.

26 The Court should reject Publishers’ invitation to drive this case further off the tracks.

27 **II. BACKGROUND**

28 Publishers filed this suit in October 2023, and fact discovery began in January 2024. ECF

1 1, 64. In August 2024, a group of book authors filed the *Bartz* complaint, which alleged that
 2 Anthropic obtained books used to train Claude from “pirated” book datasets that can be accessed
 3 via BitTorrent. *See Bartz v. Anthropic PBC*, No. 3:24-cv-5417-WHA, Compl. (N.D. Cal. Aug. 19,
 4 2024), ECF 1 (“*Bartz* Compl.”). That same month, Publishers successfully opposed case relation
 5 to *Bartz* on the basis that *Concord* involves “different sources of data,” namely “Common Crawl,
 6 YouTube, social media sites, and ... licensed lyric aggregators.” ECF 221 at 2. The Court
 7 subsequently entered a modified scheduling order, setting the deadline to amend for December
 8 2024. ECF 262. After the Court granted Anthropic’s first motion to dismiss with leave to amend,
 9 Publishers filed their First Amended Complaint (“FAC”) in April 2025. ECF 322, 336-337. But
 10 they did not seek to add the “pirated” books or BitTorrent allegations from *Bartz* at that time.
 11 Instead, Publishers waited another four months and, on the eve of the then-close of fact discovery,
 12 moved to amend to add their new claim and allegations. ECF 411. Anthropic opposed amendment.
 13 ECF 419. A hearing is scheduled for October 8, 2025. ECF 437.

14 The schedule in this matter originally set the close of fact discovery for April 2025. ECF
 15 262. That deadline was subsequently modified to September 2025 with substantial completion by
 16 July 2025. ECF 305. In August 2025, the Parties stipulated to a short extension of discovery until
 17 November 10, 2025, ECF 409, which the Court shortened to October 21, 2025, ECF 416.

18 **III. LEGAL STANDARD**

19 Once a district court files a pretrial scheduling order in a case, that schedule “may be
 20 modified only for good cause.” Fed. R. Civ. P. 16(b)(4). “Rule 16(b)’s ‘good cause’ standard
 21 primarily considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth*
 22 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (citation omitted). “If that party was not
 23 diligent, the inquiry should end.” *Id.* But “the existence or degree of prejudice to the party opposing
 24 the modification might supply additional reasons to deny a motion” to modify. *Id.*

25 **IV. ARGUMENT**

26 **A. Publishers’ Lack Of Diligence Precludes A Finding Of Good Cause**

27 Because Publishers’ discovery extension request is necessitated by their belated motion to
 28 amend, Publishers’ lack of diligence in pursuing amendment is squarely at issue here. Had Publishers

acted with any diligence, they could have investigated and brought their new claim and allegations well before the deadline to amend passed over eight months ago. *See generally* ECF 419 (Opp’n to Mot. for Leave to Amend). Publishers have been on notice of the allegations they now seek to inject into this case since at least *August 2024*, when the *Bartz* complaint alleged that Anthropic infringed book authors’ copyrights by training Claude on the very book datasets Publishers now seek to add to this case. *Bartz* Compl. ¶¶ 31-43. The *Bartz* complaint included allegations about how those “collections of pirated books ... circulate via the BitTorrent file-sharing network.” *Id.* ¶ 36 n.25. Publishers plainly could have investigated whether their lyrics were contained within any of those book datasets at that time, a year ago. Not only did Publishers fail to do so, they successfully opposed relating this case to *Bartz* based on a representation to the Court that this case does not concern the “pirated” datasets in *Bartz*, and is in fact focused on “different sources of data”: “the Common Crawl, YouTube, social media sites, and ... licensed lyric aggregators.” ECF 221 at 2.

Now, a year after the *Bartz* complaint put Publishers on notice of the “pirated” book datasets and BitTorrent allegations, and a year after they professed the irrelevance of those issue to this case, Publishers seek not only to amend the complaint to inject these issues into the case, but also to extend the fact discovery deadline by almost half a year to accommodate their last-minute about-face. Both motions should be denied based on Publishers’ patent lack of diligence.

B. Anthropic Will Be Severely Prejudiced By The Extension

Transforming a case at the last minute from one focused on the lyrics to 499 works in suit allegedly obtained from the public internet into one concerning potentially millions of books allegedly collected from a different source (so-called “pirate libraries”) via a different method (allegedly torrenting) is highly disruptive and prejudicial to Anthropic. Indeed, Publishers have already used their attempt to morph this case into a version of *Bartz* to justify staggeringly broad new discovery demands. Over a year into discovery and *after* the substantial completion deadline, Publishers suddenly demanded that Anthropic add *nine* new custodians, including the CEO and President, which would require a massive new collection and review of documents in the closing weeks of discovery. *See* Decl. of Louis W. Tompros in Supp. of Opp’n (“Tompros Decl.”) ¶ 12. Publishers also served multiple new requests for cloned discovery from *Bartz*, which they freely

1 admit are based entirely on theories set forth for the first time in their proposed amendments. *Id.* ¶¶
 2 8-10. While Magistrate Judge van Keulen properly deferred ruling on such discovery until this
 3 Court rules on the motion to amend, ECF 431, Publishers continue to pursue these untimely and
 4 burdensome demands as if their amendment has already been granted.

5 In any event, there is virtually no world in which discovery could be completed even on
 6 Publishers’ extended schedule if amendment is granted, at least without further prejudicing
 7 Anthropic. Publishers ignore *Anthropic*’s entitlement to discovery into the ownership and copyright
 8 records of the thousands of works they claim they will add. That discovery cannot occur until *after*
 9 any works from books are added to the case. Publishers’ amendment would also require fair-use
 10 discovery into the market for sheet music and songbooks—territory that is entirely uncharted in
 11 either this case or *Bartz*, undercutting Publishers’ suggestion that cloned discovery from *Bartz* is
 12 some sort of panacea for the chaos they are sowing. And Publishers’ new distribution claim based
 13 on BitTorrent uploading—which likewise would be an expansion of *Bartz*, which involves only
 14 downloading allegations—would require new experts to analyze the technical aspects of torrenting.

15 Courts routinely reject extensions and amendments that, as here, would upend the discovery
 16 schedule at the tail end of the case. *See Solomon v. N. Am. Life & Cas. Ins. Co.*, 151 F.3d 1132,
 17 1139 (9th Cir.1998) (motion to amend “on the eve of the discovery deadline” denied because it
 18 would have required reopening discovery, thus delaying proceedings); *Spin Master Ltd. v. Your*
 19 *Store Online*, 2010 WL 4883884, at *6 (C.D. Cal. Nov. 22, 2010) (rejecting motion to amend and
 20 extend discovery where adding a new “Copyright claim would force [defendant] to engage in
 21 significant additional discovery” and would force the court to extend all deadlines). The Court
 22 should do the same here where the upheaval to the schedule is undisputed.

23 **C. Publishers’ Remaining Arguments For Extension Are Meritless**

24 Although Publishers gesture to other purported justifications for a discovery extension, their
 25 alternative rationales are so insubstantial that they only confirm that the root of the problem is
 26 Publishers’ tardy and transformative motion for leave to amend. Publishers say (at 4) that an
 27 extension is required because the motion to dismiss has not been decided and Anthropic has not yet
 28 served an answer. Publishers have never raised this as an issue before, and do not dispute that they

1 have actively conducted discovery for over a year on *all* of their claims. There is no reason to delay
 2 the remaining discovery and depositions until after a ruling on the motion to dismiss. And while
 3 Anthropic has not yet filed an answer, Publishers fail to acknowledge that Anthropic *has* responded
 4 to Publishers’ myriad discovery requests, including interrogatories asking it to “[i]dentify and
 5 describe all defenses You intend to assert” and “describe in detail all facts supporting that defense,”
 6 and 119 Requests for Admission that cover the claims in the FAC. Tompros Decl. ¶¶ 4-7.

7 Publishers also claim (at 3) that without the extension they will not be able to efficiently
 8 depose certain witnesses. Not so. The deposition of individuals who Publishers assert have
 9 knowledge regarding “pirated” book datasets and BitTorrent can be scheduled after the October 8
 10 hearing on the amendment. And while Publishers vaguely suggest they “may even depose witnesses
 11 they would not have otherwise deposed” (at 3), they never say who those witnesses are.

12 None of the cases that Publishers cite involve, as here, a plaintiff seeking to extend discovery
 13 to accommodate a motion to amend that plaintiffs failed to diligently pursue and that would
 14 transform the case at the eleventh hour. Two cases grant defendants’ motions *to stay* discovery in
 15 the face of pending dispositive motions that would end the case—not an amendment that would
 16 expand it. *Bahena v. Rodriguez*, 2022 WL 319977, at *2 (E.D. Cal. Jan 14, 2022); *King v. Valley*
 17 *State Prison*, 2022 WL 783225, at *2 (E.D. Cal. Mar. 14, 2022). Good cause was found in *Bradford*
 18 *v. Marchak*, 2018 WL 1795984, at *4 (E.D. Cal. Apr. 16, 2018), based on the plaintiff’s refusal to
 19 be deposed, and in *McFall v. Stacy & Witbeck, Inc.*, 2016 WL 2851589, at *4 (N.D. Cal. May 16,
 20 2016), based on a finding that the plaintiff had not unduly delayed bringing his new allegations. In
 21 *Pardo-Pena v. Spector*, the court denied a motion to file an amended complaint, highlighting that
 22 discovery was closed with the exception of two issues. 2022 WL 3009460, at *2 (C.D. Cal. Jan.
 23 21, 2022). *Casey v. Haddad* involved a motion to extend the dispositive motion deadline pending
 24 a motion to compel. 2025 WL 2260079, at *1-2 (E.D. Cal. July 21, 2025). And Publishers’ cite to
 25 *Vespa v. Singler-Ernster Inc.*, is from the recitation of the case background; there is no indication
 26 that the extension there was opposed. 2019 WL 13072773, at *2 (N.D. Cal. Mar. 5, 2019).

27 **V. CONCLUSION**

28 The Court should deny Publishers’ motion to extend the case schedule.

Date: September 23, 2025

/s/ Louis W. Tompros

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