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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL SULLIVAN, et al.,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant.

No. 3:26-cv-06793-VC

**OPPOSITION TO PLAINTIFFS’
MOTION TO APPOINT INTERIM CLASS
COUNSEL**

CLASS ACTION

Date: October 29, 2026
Time: 2:00 pm (PDT)
Courtroom: Videoconference Only
Judge: Hon. Vince Chhabria

I. INTRODUCTION

Plaintiffs in *Elsevier, Inc. v. Meta Platforms, Inc.*¹ (the “*Elsevier* Plaintiffs”) respectfully submit this opposition to the Motion to Appoint Interim Lead Counsel (“Motion” or “Mot.”) filed by the Plaintiffs in this case (the “*Sullivan* Plaintiffs”) because the Motion is both premature and unnecessary.

II. PROCEDURAL BACKGROUND

As the Court is aware, three proposed class actions are pending against Defendant Meta Platforms, Inc. (“Meta”) arising from Meta’s unlawful copying and distribution of copyrighted books and journals to build its generative AI model, Llama. *Kadrey v. Meta Platforms, Inc.*, No. 3:23-cv-03417-VC, was filed on July 7, 2023, in this District. *Elsevier* was filed on May 5, 2026, in the Southern District of New York and then transferred to this District on September 25, 2026. *Sullivan v. Meta Platforms, Inc.*, No. 3:26-cv-06793-VC, was filed on July 2, 2026, in this District by six textbook authors, after one of those authors was denied intervention in *Elsevier* and the author’s attorneys were denied their request to serve as separate counsel for a subclass of textbook authors. See Memo. Endorsement Den. Intervention, *Elsevier, Inc. v. Meta Platforms, Inc.*, No. 1:26-cv-03689-PKC, Dkt. No. 56 (S.D.N.Y. June 10, 2026).

The *Elsevier* Plaintiffs consist of five publishers and an author. Plaintiffs Elsevier Inc., Cengage Learning, Inc., and McGraw Hill LLC publish academic and educational works, such as textbooks and journal articles. Compl. ¶¶ 44–45, 48, 55, *Elsevier*, No. 1:26-cv-03689-PKC, Dkt. No. 1 (S.D.N.Y. May 5, 2026) (“*Elsevier* Compl.”). Plaintiffs Hachette Book Group, Inc. and Macmillan Publishing Group, LLC publish best-selling and award-winning books across a wide range of fields, from literary and genre fiction to children’s books and nonfiction. See *id.* ¶¶ 46–47. Plaintiff Scott

¹ Because *Elsevier*’s transfer from the Southern District of New York to this District has not yet been administratively completed, the case lacks a docket number in this District.

1 Turow is an author of fiction and nonfiction works, and has been published by Hachette; Mr. Turow's
2 company, S.C.R.I.B.E., Inc., which owns his copyrights, is also a Plaintiff. *Id.* ¶¶ 49, 122.

3 *Elsevier* alleges six claims against Meta and Mark Zuckerberg: five for copyright infringement
4 and one for alteration and/or removal of copyright management information pursuant to the Digital
5 Millennium Copyright Act. *Id.*, Counts I–VI. *Elsevier*'s proposed class definition encompasses legal
6 and beneficial owners of registered copyrights for books and journal articles that Meta infringed. *See*
7 *id.* ¶ 167. The proposed *Elsevier* class thus includes authors of copyrighted textbooks.

9 As alleged in the *Elsevier* Complaint, Meta, at Zuckerberg's direction, illegally copied millions
10 of works from the internet, including those owned or controlled by the *Elsevier* Plaintiffs, to develop
11 Llama. *Id.* ¶ 70. Defendants downloaded copyrighted works from datasets or websites well known to
12 contain pirated materials. *Id.* ¶¶ 71–83, 88–98. Defendants then made many more illegal copies of the
13 stolen works to create training sets for Llama. *Id.* ¶¶ 108–114. Copyrighted books, educational works
14 (including textbooks), and journals make high-quality training materials for LLMs. *Id.* ¶ 68. Meta
15 researchers and engineers have confirmed that training LLMs on copyrighted books and journals yields
16 better results than training them on more general text datasets. *Id.* ¶ 69.

18 The *Elsevier* Complaint alleges Defendants' conduct harmed Plaintiffs and the putative class
19 members (including textbook authors) in numerous ways. The market has been flooded with AI-
20 generated works, causing market dilution that already has resulted in tangible, real-world impacts to
21 the class. *Id.* ¶¶ 147–154. The Llama models produce knockoffs of Plaintiffs' copyrighted works that
22 replace demand for the originals. *See id.* ¶¶ 142–146. The market for derivative works, including the
23 market for study guides, outlines, and question sets that accompany copyrighted textbooks, has been
24 undermined by the flood of AI-generated works. *Id.* ¶¶ 155–160. And Llama produces detailed
25 summaries and paraphrases of copyrighted works that serve as substitutes (for at least some
26 consumers). *See id.* ¶¶ 138–141.

1 The *Sullivan* Plaintiffs have moved to be appointed lead counsel for a subclass of textbook
2 authors, seeking interim appointment “before a publisher action can arrive here.” Mot. at 15. This
3 Court invited the *Elsevier* Plaintiffs to weigh in on the motion at the most recent case management
4 conference. Hr’g Tr. at 30:14–30:17 (Sep. 25, 2026) (“I am sure those lawyers are watching this Case
5 Management Conference, so they know that they have an opportunity to file something in connection
6 with this motion if they wish, even if they are not transferred over by that time.”). Consistent with the
7 Court’s direction, the *Elsevier* Plaintiffs now respectfully submit this opposition.

9 III. LEGAL STANDARD

10 The appointment of class counsel typically occurs only upon class certification “absent a
11 special justification.” *Garza v. Regal Cinemas*, No. C25-1941-KKE, 2026 WL 1784795, at *1 (W.D.
12 Wash. June 22, 2026). Such appointments are governed by Rule 23(g)(3), which is discretionary.
13 Courts are not required to appoint interim class counsel, and the advisory notes to the Rule provide that
14 interim class counsel should be appointed “if necessary to protect the interests of the putative class.”
15 Fed. R. Civ. P. 23 advisory committee’s note to 2003 amendment.

17 Although “in some cases . . . there may be rivalry or uncertainty that makes formal designation
18 of interim counsel appropriate,” *In re Google Assistant Priv. Litig.*, No. 19-cv-04286, 2020 WL
19 7342713, at *1 (N.D. Cal. Dec. 14, 2020) (quoting Fed. R. Civ. P. 23 advisory committee’s note to
20 2003 amendment), early appointment of interim counsel should not be used as “a protective measure to
21 try to establish . . . territory and prevent or . . . discourage other people from filing similar lawsuits.”
22 Hr’g Tr. at 14:19–21, *Kadrey v. Meta Platforms*, No. 3:23-cv-03417-VC, Dkt. No. 28 (N.D. Cal.
23 proceedings held Jan. 25, 2024). Nor should a class action plaintiff “manufacture conflict in an attempt
24 to get an early bite at the apple for motions for the appointment of lead plaintiff and selection of lead
25 counsel.” *In re Google Assistant Priv. Litig.*, 2020 WL 7342713, at *2.
26
27

IV. ARGUMENT

The Motion is both premature and unnecessary and, therefore, should be denied.

A. At This Stage, Appointment of Class Counsel Is Premature.

The *Sullivan* Plaintiffs' request to be appointed interim class counsel comes well before any decision on class certification. In *Kadrey*, the Court has issued a summary judgment ruling on a discrete issue specific to those named plaintiffs, with another round of summary judgment briefing to commence later this year. The Court has not yet set a schedule for class certification. In *Sullivan*, the Court will not consider any motion for class certification for at least fifteen months. *Elsevier*, though transferred, has not yet been formally docketed in this District, and the Court has not set a case management schedule.

As this Court observed during the September 25 conference, the typical process would be for the unconsolidated cases to proceed, and class counsel to be appointed at the certification stage. *See* Hr'g Tr. at 27:20–28:1 (Sep. 25, 2026) (“[I]f this is the only proposed class action on behalf of textbook authors that’s before me . . . what is the point of appointing interim class counsel? . . . Why don’t we just . . . proceed and then I can appoint a named . . . class plaintiff, and class counsel at the class certification stage?”).

There is no “special justification” to deviate from that standard practice here. *Garza*, 2026 WL 1784795, at *1. The *Sullivan* Plaintiffs argue that conflicts between authors and publishers may arise in allocating a judgment or settlement, *e.g.*, Mot. at 2, but allocation, if there is to be any, lies in the future. It will not happen until after fact discovery, expert discovery, *Daubert* motions, summary judgment motions, class certification, and either a negotiated settlement or a litigated final judgment. None of the three pending class actions against Meta has reached that end stage, and two of them, *Elsevier* and *Sullivan*, are still in their relative infancies. Indeed, the transfer process for the *Elsevier* Plaintiffs is not yet complete. While the *Sullivan* Plaintiffs assert that, when the time for allocation

1 arrives, “the prejudice” to textbook authors “may already be unavoidably established,” they fail to
2 explain how or why that may be so. Mot. at 14.

3 Even if subclasses prove necessary at the allocation stage, “[m]ere speculation as to conflicts
4 that may develop at the remedy stage is insufficient” to support a separate subclass, with separate
5 counsel, now. *Soc. Servs. Union, Local 535 v. Santa Clara County*, 609 F.2d 944, 948 (9th Cir. 1979);
6 *see also Rollins v. Dignity Health*, 336 F.R.D. 456, 464–65 (N.D. Cal. 2020) (noting that subclassing,
7 like denial of class certification on adequacy grounds, requires a fundamental conflict). Before
8 allocation, “the existence of such conflicts is hypothetical.” *Kohen v. Pac. Inv. Mgmt. Co.*, 571 F.3d
9 672, 680 (7th Cir. 2009). Only “[i]f and when they become real” should a district court “certify
10 subclasses with separate representation of each.” *Id.*; *see also In re Online DVD-Rental Antitrust Litig.*,
11 779 F.3d 934, 942 (9th Cir. 2015) (distinguishing between “fundamental” and “speculative” conflicts).
12
13

14 The Motion incorrectly relies on *Amchem Products Inc. v. Windsor*, 521 U.S. 591 (1997) and
15 *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999) to argue “that structural protection *during the*
16 *litigation*” is needed to reconcile purported diverging interests in allocation later. *Cf.* Mot. at 14
17 (emphasis added). In both of those cases, the plaintiffs never intended to litigate, had already
18 negotiated a settlement agreement when they filed their complaint, and sought class certification for
19 the purpose of settlement—without any subclasses and in spite of undoubtedly competing interests
20 between individuals currently injured and those who might be injured in the future. *See Amchem*, 521
21 U.S. at 601–02, 626–27 (explaining that individuals currently injured from asbestos exposure had an
22 interest in “generous immediate payments,” whereas those exposed to asbestos had an interest in “an
23 ample, inflation-protected fund for the future”); *Ortiz*, 527 U.S. at 821–25, 848–49, 854–57 (same).
24 Here, of course, no settlement or allocation plan exists, and there are no analogous competing interests
25 between individuals currently injured and individuals who may be injured in the future. Instead,
26 authors and publishers hold legal and beneficial interests in the same works and thus rise or fall
27

1 together in proving infringement and maximizing the recovery attributable to each work. If that
 2 recovery increases, both have more to divide; if the claim fails, both recover nothing.

3 In recognizing that a subclass is currently unnecessary, the *Elsevier* Plaintiffs do not discount
 4 textbook authors' interests in allocation as unimportant, as the pending motion seems to imply. *See*
 5 Mot. at 14. On the contrary, the interests of textbook authors, who are included in the proposed
 6 *Elsevier* class, are important in all phases of this case. And indeed, textbook authors, like textbook
 7 publishers, have an immediate and concrete interest in the allocation of an actually existing judgment
 8 against or settlement with a copyright infringer. Before those funds exist, however, the interest of both
 9 authors and publishers in the funds is contingent and hypothetical. Thus, when one of the *Sullivan*
 10 Plaintiffs attempted to intervene in *Elsevier*, the *Elsevier* Plaintiffs argued that the author's interest in
 11 the allocation of an award or settlement was "remote" because the case was barely a month old at the
 12 time. Pls.' Pre-Motion Letter in Opp'n to Intervention at 3, *Elsevier*, No. 1:26-cv-03689-PKC, Dkt.
 13 No. 49 (S.D.N.Y. June 4, 2026). His interest was "speculative at [that] stage" of litigation because it
 14 was "contingent on future events," such as "discovery, summary judgment, and class certification." *Id.*
 15 Ultimately, Judge Castel agreed, denying intervention without prejudice to renewal of the motion if, in
 16 the future, he set a schedule for class certification. Memo. Endorsement Den. Intervention, *Elsevier*,
 17 No. 1:26-cv-03689-PKC, Dkt. No. 56.

18 As this Court observed, the ordinary process is for class counsel decisions to be made at the
 19 same time as class certification. That process should be followed here (at least at this very early stage),
 20 and the *Sullivan* Plaintiffs' Motion denied as premature.

21 **B. Appointment of Interim Class Counsel Is Unnecessary to Address Any Present Conflict.**

22 Allocation aside, the Motion fails to identify any *present* conflict between textbook authors and
 23 other class members, who share precisely the same goal: to prove that Meta's infringement of their
 24 copyrighted works is not excused under the affirmative defense of fair use. Given that current

1 alignment, there has been no indication of rivalry, uncertainty, or competition among plaintiffs or
2 counsel involved in the Meta AI cases that could justify the appointment of interim class counsel. *In re*
3 *Google Assistant Priv. Litig.*, 2020 WL 7342713, at *2 (denying motion to appoint interim class
4 counsel in a consolidated class with three separate groups of plaintiffs each represented by different
5 counsel).

6
7 Taking a slightly different tack, the *Sullivan* Plaintiffs argue that they are the only ones
8 interested in developing theories of “[d]ilution of a functional-work market,” “[s]ubstitution inside the
9 instructional setting,” and “[a]doption and revision economics.” Mot. at 9–10 (emphasis omitted). That
10 is just not true. These very theories are among the ones that the *Elsevier* Plaintiffs have pleaded and
11 intend to pursue. Their Complaint alleges, among other things, that Llama dilutes the market for
12 textbooks and supplemental materials by providing free and instantaneous access to AI-generated
13 study materials. *Elsevier* Compl. ¶¶ 155–156; cf. Mot. at 9, 10 (discussing market dilution). They also
14 allege that Llama generates substitutes for textbooks and derivative works by producing outputs that
15 copy protected works verbatim or near verbatim, by providing summaries for such works, and by
16 flooding the market with knockoffs and imitations. *Elsevier* Compl. ¶¶ 136–137, 139–140, 148, 153–
17 154; cf. Mot. at 9 (discussing substitution). The *Elsevier* Plaintiffs’ Complaint even includes a
18 textbook-specific example of just how damaging Llama can be to such works. Prompted merely by two
19 brief sentences from *Calculus: Early Transcendentals*, a best-selling textbook published by Cengage,
20 the Complaint alleges Llama spat out an almost identical version of the section that followed the two
21 sentences. *See Elsevier* Compl. ¶ 136. This reproduction copied all of the textbook author’s protected
22 pedagogical choices, down to his creative real-world examples of mathematical concepts.

23
24
25 Textbook publishers are the economic stewards of textbook copyrights; they develop, edit, and
26 market textbooks and associated learning materials; they work with faculty and universities to ensure
27 adoption of textbooks across departments; and they possess some of the aggregate evidence about

1 sales, adoptions, subscriptions, licensing, and consumer preferences that will bear on market harm on a
 2 classwide basis. Even the *Sullivan* Plaintiffs’ counsel acknowledged that evidence of textbook market
 3 harm will come from “multiple publishers, which are some of the bigger publishers on the street.” Hr’g
 4 Tr. at 26 (Sep. 9, 2026).

5 Whether a specific subclass for textbooks is necessary, moreover, requires factual development.
 6 It may well be that the proof of potential harm to the textbook market overlaps with the proof of
 7 potential harm to markets for other copyrighted works, rendering a subclass for textbooks entirely
 8 unnecessary and inappropriate. But, as with other questions of class certification, this question cannot
 9 be decided on the pleadings. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). It must
 10 await evidentiary development.
 11

12 Accordingly, the *Sullivan* Plaintiffs’ Motion should be denied as unnecessary.
 13

14 V. CONCLUSION

15 The *Elsevier* Plaintiffs respectfully request that the Court deny the Motion without prejudice to
 16 its renewal at a later stage of the case.

17 DATED this 6th day of October, 2026.

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